

INSTRUCTIONS FOR COMPLETING FCC FORM 601

FCC Form 601: General Requirements¹

In completing the FCC Form 601 either electronically or manually, applicants are encouraged to use the format below in submitting the information required by our rules as exhibits. Although the suggested organizational approach is discretionary, submission of the materials in the manner described below should expedite the processing of the FCC Form 601.

Applicants bear full responsibility for submission of timely and complete FCC Form 601 applications. Applicants should read the instructions on the FCC Form 601 carefully and should consult the rules to ensure that, aside from the materials described below, all the information that is required under our rules is included with their FCC Form 601 applications. **Incomplete or defective applications may be returned to the applicant.** See 47 C.F.R. §§ 1.918, 101.35(b). Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application. See 47 C.F.R. § 1.65.

An applicant that fails to submit the required FCC Form 601 application by **5:30 p.m. Eastern Time on Thursday, April 9, 1998**, and fails to establish good cause for any late-filed submissions, shall be deemed to have defaulted and will be subject to the default payments set forth in 47 C.F.R. §§ 1.2104(g)(2), 101.1103(f).

Number of Forms To Be Filed

Electronic or manual filers applying for multiple licenses are not required to submit a separate application for each market if **all** filing requirements associated with the application are identical **except** for the market designator, channel block, and market name. Under these circumstances, applicants may submit *one* FCC Form 601 Main Form and Schedule B.

Frivolous Pleadings

Pursuant to 47 C.F.R. § 1.52, the Commission reminds parties to our proceedings and their attorneys that the Commission intends to fully use its authority to discourage and deter the filing

¹ Note: Although Part 101 directs LMDS applicants to file FCC Form 600, that form has been replaced by FCC Form 601. Therefore, FCC Form 601 should be used in complying with the LMDS long form application filing requirements.

of frivolous pleadings. *See Public Notice*, "Commission Taking Tough Measures Against Frivolous Pleadings," FCC 96-42 (rel. Feb. 9, 1996).

Organization of Application

Main Form

The FCC Form 601 Main Form should be completed in its entirety, except for Items 35 through 37, which do not apply. Note the following:

- For Item 1 (Radio Service Code), enter **LD**.
- For Item 2 (Application Purpose), enter **NE** for New.
- For Item 3, enter **N** for Not Applicable.
- If you plan to file a request for a waiver or exception to the Commission's rules, enter **Y** in Item 6 and attach an exhibit that lists relevant rule section(s) and explains the circumstances.
- For Item 11, in lieu of filing FCC Form 602, you must include Exhibit A and comply with each of the ownership requirements discussed below.
- If the Real Party in Interest differs from the applicant, the Taxpayer Identification Number entered in Item 12 must be registered with the FCC before Form 601 is filed.
- For Item 32, if you require clarification from the FCC regarding your regulatory status, attach your request in Exhibit H.

Schedule B

On Schedule B, complete Items 1 through 3 for each market for which the applicant is filing. Note the following:

- Complete Item 1 (Market Designator) with the BTA number of the market.
- For Item 2 (Market Name), enter the market name.
- For Item 3 (Channel Block), enter **A** or **B**.

Electronic filers should note that the electronic filing software lists all market information for all markets that the applicant won in the auction. The applicant must select the markets it wants to include on the application.

Main Form-Related Exhibits

Any exhibits to be attached to an application in response to a question on the FCC Form 601 Main Form or on Schedule B should be identified as specified in the instructions to the FCC Form 601. Please attach those exhibits immediately behind the FCC Form 601 FCC and the Schedule B.

Electronic filers should use the Attachment screen provided within the electronic filing software to submit these exhibits as uploaded files and should select the appropriate attachment type. The electronic filing software will accept a variety of file formats including Word, Word Perfect, Excel, Lotus, and ASCII text. See online help for a full list of acceptable file formats.

Rule-Related Exhibits

Any exhibits to be attached to an application as a result of our rule requirements should follow any FCC Form 601 Main Form or Schedule B exhibits. Please order and identify these exhibits as follows:

<u>Title</u>	<u>Required From</u>
Exhibit A: Ownership	All Applicants
Exhibit B: Foreign Ownership	If Applicable
Exhibit C: Designated Entities	Designated Entity Applicants
Exhibit D: Agreements & Other Instruments	If Applicable
Exhibit E: Confidentiality Requests	If Applicable
Exhibit F: Waiver Requests	If Applicable
Exhibit G: Eligibility Restrictions/Divestiture	If Applicable
Exhibit H: Regulatory Status	If Applicable

As specified in the instructions to the FCC Form 601, each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit, and the total number of pages of the exhibit.

Electronic filers should use the Attachment screen to upload each exhibit file and select the appropriate attachment type. The recommended titles listed above should be entered in the File Description field on the Attachment screen. The electronic filing software will accept a variety of file formats including Word, Word Perfect, Excel, Lotus, and ASCII text. See online help for a full list of acceptable file formats.

I. Applicant Identity and Ownership Information

Background

Section 1.2112 of the Commission's rules requires each applicant to make full and complete disclosure with regard to the real party or parties in interest and as to all matters required to be disclosed by the application form.

Applicants should attach the information concerning the identity of the applicant (*i.e.*, real party- or parties-in-interest) and ownership interests held in the applicant and in investors in the applicant. Each application shall be clear and complete in itself without cross reference to information previously filed. Please clearly label additional pages to indicate the Exhibit and Item number to which those pages relate.

EXHIBIT A: OWNERSHIP

Applicants should attach to Exhibit A a graphic summary (flowchart) of their ownership structure, comprised of direct and indirect owners disclosable pursuant to §1.2112. See attached sample for an example.

For those applicants with direct or indirect ownership interests in other entities, they need only list such entities (and not provide a graphic summary of ownership) in Exhibit A.

Part 1: Direct Ownership

First, attach and label as "**Exhibit A: Ownership**" a document or series of documents that identifies all persons or entities that *directly* hold a 10 percent or more interest in the applicant. For each 10 percent or greater interest holder listed, applicants should provide the following information:

Item (1) Name and address: Identify the name and address of the interest holder. If the interest holder is an individual, provide the name and address of that person, and indicate whether the interest holder is a partner, officer, director, or key manager (*e.g.*, CEO, General Manager) of the applicant. If the interest holder is a corporation, provide the name and address of the corporate office and the name and title of an officer, director or authorized contact person. If the interest holder is a partnership, provide the name and address of all partners, and the name, title and address of an authorized contact person for the partnership.

Item (2) Principal Business: Describe the interest holder's principal business and its relationship to the applicant.

Item (3) Relationship to Other Interest Holder: Indicate whether the interest holder is related to any other ten percent or greater interest holder by blood or marriage, and provide the name of the related interest holder.

Item (4) Amount Held: Specify the amount held (e.g., number of shares of stock and percentage of total ownership) for each type of interest specified.

Item (5) Type of Interest Held: Indicate whether the interest held is in the form of stocks, bonds, warrants, debt instruments, partnership, etc. If interests are held in stock, specify the class of stock and any voting rights associated with the stock. If the interests are held in a partnership, indicate whether the interests are limited or general partnership interests.

Item (6) Interests Held on Behalf of Others: If an interest is held in trust, or on behalf of another person or entity, identify the party for whom the interest is held.

Part 2: Indirect Ownership

Second, as part of "**Exhibit A: Ownership**" attach and label a document or series of documents that identifies all persons or entities that **indirectly** hold a 10 percent or more interest in the applicant. For each person or entity listed, provide the same information listed in *Items (1)-(6)* above as is requested for *direct* interests.

Part 3: Other Disclosable Interest and Entities

Third, as part of "Exhibit A: Ownership" attach and label a document or series of documents that identifies all persons or entities required to be disclosed pursuant to 47 C.F.R. § 1.2112(a)(1) and (3). Each such business principal business and a description of each such business relationship to applicant must be included.

To comply with 47 C.F.R. 1.2112(a)(5), an applicant must list the names, addresses, and citizenship of all persons or entities meeting the definition of "affiliate" as defined in 47 C.F.R. § 101.1112(d). To the extent that such entities are not included in Parts 1 and 2 of Exhibit A, they should be identified and included in Part 3.

Electronic filers should select Attachment Type 'Ownership' and enter "Exhibit A: Ownership" in the File Description field on the Attachment screen.

EXHIBIT B: FOREIGN OWNERSHIP

If the applicant has responded "yes" to either Question 39, 40, 41, 42, or 43 on the FCC Form 601, attach and label as "**Exhibit B: Foreign Ownership**" a document that explains the circumstances regarding foreign ownership in the applicant. For every foreign owner, applicants should provide the following information:

Item (1) Percentage of Interest: Identify each foreign owner's percentage of ownership in the applicant.

Item (2) Country of Origin and Address: List each foreign owner's country of origin and principal place of business.

Electronic filers should select Attachment Type 'Ownership' and enter "Exhibit B: Foreign Ownership" in the File Description field on the Attachment screen.

EXHIBIT C: DESIGNATED ENTITIES

Pursuant to Section 101.1112 of the Commission's Rules, entrepreneurs, small businesses, very small businesses are eligible for bidding credits of 25 percent, 35 percent, and 45 percent respectively, to lower the cost of their winning bids. Entrepreneurs, small businesses and very small businesses are defined in Section 101.1112 of the Commission's Rules. Applicants that are not claiming eligibility for bidding credits do not need to submit Exhibit C. We nonetheless note, that we are interested in the status of applicants as minority-owned or women-owned businesses for statistical purposes.

If applying for a bidding credit, attach and label as "**Exhibit C: Designated Entities**" a document or series of documents that identifies, separately and in the aggregate for the applicant and each affiliate, the gross revenues for the most recently completed three calendar or fiscal years preceding the filing of the applicant's FCC Form 175 based on audited financial statements. If the applicant does not have audited financial statements to document the gross revenues figures provided, it must provide a certification from its chief financial officer that the gross revenue figures indicated in its FCC Forms 175 and 601 applications are true, full, and accurate, and that the applicant does not have the audited financial statements that are otherwise required under our rules. *See* 47 C.F.R.

§ 101.1112(g). Identify the applicant's claimed eligibility status and provide the requisite information demonstrating such status as indicated in the following instructions:

Entrepreneur

Applicants claiming status as an entrepreneur must compute gross revenues in accordance with 47 C.F.R. § 101.1112(g) to demonstrate such status under our rules. An entrepreneur is an entity that, together with its affiliates and controlling principals, has average gross revenues that are greater than \$40 million but less than or equal to \$75 million for the preceding three years. 47 C.F.R. § 101.1112(d). Gross revenues for each year should be separately identified and followed by the computed average total gross revenues over those years. For purposes of determining whether an entity meets the definition, the gross revenues of the entity, its affiliates, and controlling principals shall be considered on a cumulative basis and aggregated. 47 C.F.R. § 101.1112(e). The status of the applicant as a minority-owned or women-owned business also is requested, but for statistical purposes only.

Small Businesses

Applicants claiming status as a small business must compute gross revenues in accordance with 47 C.F.R. § 101.1112(g) to demonstrate such status under our rules. A small business is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are greater than \$15 million but less than or equal to \$40 million for the preceding three years. 47 C.F.R. § 101.1112(c). Gross revenues for each year should be separately identified and followed by the computed average total gross revenues over those years. For purposes of determining whether an entity meets the definition, the gross revenues of the entity, its affiliates, and controlling principals shall be considered on a cumulative basis and aggregated. 47 C.F.R. § 101.1112(e). The status of the applicant as a minority-owned or women-owned business also is requested, but for statistical purposes only.

Very Small Businesses

Applicants claiming status as a very small business must compute gross revenues in accordance with 47 C.F.R. § 101.1112(g) to demonstrate such status under our rules. A very small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues that are not more than \$15 million for the preceding three years. 47 C.F.R. § 101.1112(b). Gross revenues for each year should be separately identified and followed by the computed average total gross revenues over those years. For purposes of determining whether an entity meets the definition, the gross revenues of the entity, its affiliates, and controlling principals shall be considered on a cumulative basis and aggregated. 47 C.F.R. § 101.1112(e). The status of the applicant as a minority-owned or women-owned business also is requested, but for statistical purposes only.

Small Business & Very Small Business Consortia

Applicants that applied as a **small business consortia** or **very small business consortia** as defined in 47 C.F.R. § 101.1112(f) must compute and indicate gross revenues as outlined above for **each** small or very small business in the consortium. That is, each business entity comprising the consortia must qualify and show gross revenues separately. The gross revenues of each entrepreneur, small or very small business shall not be aggregated. *See* 47 C.F.R. § 101.1112(f).

Electronic filers should select Attachment Type ‘Other’ and enter “Exhibit C: Designated Entities” in the File Description field on the Attachment screen.

II. Information Not Related to Identity or Ownership

The following exhibits provide places for the applicant to give the Commission information not related to the disclosure of the identity of the real party- or parties-in-interest submitting an application or applications.

EXHIBIT D: AGREEMENTS & OTHER INSTRUMENTS

Applicants should attach and label as "**Exhibit D: Agreements and Other Instruments**" a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint ventures, partnerships or other agreements or arrangements into which the applicant has entered relating to the competitive bidding process prior to the time the bidding was completed. To comply with this requirement, applicants may either submit the agreements themselves or submit a detailed description of those agreements with proprietary information excluded. If applicants choose to submit the agreements, they can redact proprietary information or can seek confidentiality for those documents pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459 (*see* discussion of confidentiality requests under "**Confidentiality Requests**" below).

Electronic filers should select Attachment Type 'Other' and enter "Exhibit D: Agreements & Other Instruments" in the File Description field on the Attachment screen.

EXHIBIT E: CONFIDENTIALITY REQUESTS

Applicants should be aware that all information required by the Commission's rules in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications and, as such, will be available for public inspection. Required proprietary information may be redacted, and confidentiality may be sought pursuant to 47 C.F.R. § 0.459. Applicants requesting confidential treatment for any information required as a condition to participate in the auction must follow the procedures set forth in 47 C.F.R. § 0.459.

If an applicant has sought confidential treatment of any information, it should attach and label as "**Exhibit E: Confidentiality Requests**" a statement which references the request; otherwise Exhibit E should be omitted. Because the required information bears on an applicant's qualifications, the Commission envisions that confidentiality requests will not be routinely granted. An applicant's request for confidentiality must include a demonstration that it would suffer substantial competitive harm from the public disclosure of the information in question.

Note: There is no need to include an Exhibit E stating there is no confidentiality request.

Electronic filers should select Attachment Type 'Confidentiality' and enter "Exhibit E: Confidentiality Requests" in the File Description field on the Attachment screen.

Important:

All attachments will be available for public inspection unless the applicant has requested confidential treatment for each applicable attachment. Manual filers must clearly label each separate attachment for which they request confidential treatment in addition to

providing Exhibit E. Electronic filers must select Attachment Type ‘Confidentiality’ for each attachment for which they request confidential treatment in addition to providing Exhibit E.

EXHIBIT F: WAIVER REQUESTS

In the event a winning bidder wishes to file a request for waiver, all such requests should be filed with the corresponding application as "**Exhibit F: Waiver Requests.**" Waiver requests filed after the submission of the FCC Form 601 may result in a delay of the processing of the application. If a request for waiver is filed separately from the FCC Form 601, such request must reference the corresponding application.

Note: There is no need to include an Exhibit G stating there are no waiver requests.

Electronic filers should select Attachment Type ‘Waiver’ and enter “Exhibit F: Waiver Requests” in the File Description field on the Attachment screen.

EXHIBIT G: ELIGIBILITY RESTRICTIONS/DIVESTITURE

Under the Commission's Rules, no incumbent LEC or incumbent cable company nor any entity owning an attributable interest in an incumbent LEC or incumbent cable company shall have an attributable interest in an LMDS Block A licensee whose geographic service area significantly overlaps such incumbent's authorized or franchised service area. 47 C.F.R. § 101.1003(a). Incumbent LEC or incumbent cable company applicants that are in compliance with 47 C.F.R. § 101.1003(a) do not need to submit Exhibit G. We nonetheless note, that we are interested in the status of such applicants as incumbent LECs or incumbent cable companies for statistical purposes.

For each Block A license won, provide a list of all incumbent local exchange carriers and incumbent cable companies identified in Exhibit A whose authorized or franchised service area has a significant overlap with the LMDS Block A service area pursuant to 47 C.F.R. § 101.1003(d), whether or not they are attributable under Section 101.1003(e) of the Commission's Rules.

For each Block A license won, either: 1) certify for each attributable incumbent LEC or cable company under Section 101.1003(a), that there is no significant overlap between the LEC/cable company franchise area and the applicant's Block A service area in accordance with Section 101.1003(d); or 2) submit a signed statement in compliance with 47 C.F.R. § 101.1003(f), describing the applicant's efforts to date and future plans to come into compliance with the eligibility restrictions established in Section 101.1003(a) of the Commission's Rules.

Electronic filers should select Attachment Type ‘Divestiture’ and enter “Exhibit G: Eligibility Restrictions/Divestiture” in the File Description field on the Attachment screen.

EXHIBIT H: REGULATORY STATUS

Each applicant is required to specify on Form 601, Question 32, the regulatory status under which it will operate its LMDS system(s). *See* 47 C.F.R. § 101.1017. You may choose more than one category.

Part 101 of the rules provides applicants an option to select regulatory status as a common carrier, non-common carrier or both. *See* FCC Form 601 instructions for definitions. If you do not know which type or types of status apply to the services you plan to offer, you may request that the FCC rule on your regulatory status. This request should be made in Exhibit H. If you file Exhibit H, describe the services you plan to offer in detail, and also discuss whether you will hold these services to the public indiscriminately.

Electronic filers should select Attachment Type 'Other' and enter "Exhibit H: Regulatory Status" in the File Description field on the Attachment screen.