



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA 00-2416
October 27, 2000

AM Auction No. 32 Mutually Exclusive Applicants Subject to Auction

Settlement Period for Groups which Include a Major Modification Applicant

Filing Period for Section 307(b) Submissions

Report No. AUC-00-32-E (Auction No. 32)

On November 19, 1999, the Mass Media Bureau and the Wireless Telecommunications Bureau (collectively the "Bureaus") announced a five-day period, from January 24, 2000 to January 28, 2000, for the filing of applications for new AM stations and major modifications to authorized AM stations.¹ The filing window was subsequently extended to February 1, 2000.² By this Public Notice, the Bureaus provide, as Attachment A, a list of all applications received during the filing window, as extended, that are mutually exclusive with other applications submitted in the filing window.³ Since the applications

¹ *AM Auction Filing Window and Application Freeze; Notice and Filing Requirements Regarding January 24 – 28, 2000 Window for Certain AM Construction Permits; Notice Regarding Freeze on the Acceptance of AM Minor Change Construction Permits from December 24, 1999 to January 21, 2000, Public Notice*, 14 FCC Rcd 19490 (1999) ("November 19, 1999, Public Notice"). Since any mutually exclusive application filed during the window would be subject to the Commission's auction procedures, *see* note 4 *infra*, applicants were required to file electronically a FCC Form 175. They also were required to file Section I and the Section III-A Tech Box of FCC Form 301, Application for Construction Permit. These sections permitted the staff to determine mutual exclusivities between applicants.

² *AM Auction Filing Window and Application Freeze Extended to February 1, 2000, Public Notice*, 15 FCC Rcd 1910 (2000). A Remedial Filing Window from July 31, to August 4, 2000 was established for certain specified entities. *See AM Auction Remedial Filing Window, Notice and Filing Requirements Regarding July 31-August 4, 2000 Remedial Filing Window for AM Auction, Public Notice*, DA 00-1582 (July 14, 2000).

³ In determining mutual exclusivity among the AM applications, the staff employed technical standards consistent with the Commission proceeding undertaken to revitalize and improve the AM service. *See Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), *recon granted in part and*

listed in Attachment A are mutually exclusive with at least one other proposal, they are subject to the Commission's competitive bidding procedures.⁴ By this Public Notice, the Bureaus announce a settlement period for certain specified groups of mutually exclusive AM applicants and a period for filing 47 U.S.C. § 307(b) supplementary information, if relevant; the deadline for both is **December 29, 2000**.

Anti-Collusion Rule. The prohibition of collusion set forth in 47 C.F.R. § 1.2105(c) becomes effective upon the filing of FCC Form 175, Application to Participate in an FCC Auction, and applies to all broadcast service auctions. *See* 47 C.F.R. § 73.5002(d). However, in certain circumstances, the Commission will allow a limited opportunity to settle, or otherwise resolve mutual exclusivities by means of engineering solutions, following the filing of the FCC Form 175 applications.⁵ Specifically, mutually exclusive groups listed in Attachment A consisting of either (1) major modification AM applications that are mutually exclusive with each other; or (2) major modification and new station AM applications that are mutually exclusive with each other, may submit settlement agreements or technical solutions to the Commission during the period which commences with the release of this public notice and ends December 29, 2000. The Commission will proceed to auction any competing mutually exclusive applications that are not resolved by the parties. Mutually exclusive groups consisting of only new station applications will be resolved through auction procedures.⁶

Applicants who are permitted to resolve their mutual exclusivities through settlement, described *supra*, must ensure that their settlement agreements comply with the provisions of 47 U.S.C. § 311(c) and pertinent requirements of 47 C.F.R. § 73.3525, including, *inter alia*, reimbursement restrictions.⁷ In the interest of expediting new service to the public, conserving agency resources, and preserving the efficacy of the anti-collusion rules in general, only *universal* settlements will be considered.⁸ To facilitate processing, applicants who intend to settle should promptly notify the staff in writing that a pre-auction settlement is forthcoming. The prevailing party in the universal settlement proposal must submit the agreements and affidavits required by 47 C.F.R. § 73.3525.⁹ The staff will request a complete FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, from the prevailing party upon approval of the settlement submission.

denied in part, 8 FCC Rcd 3250 (1993). The staff also applied the following rule sections: 47 C.F.R. §§ 73.37, 73.182, 73.183(b)(1).

⁴ *See* 47 U.S.C. § 309(j); 47 C.F.R. § 73.5000(a); *see generally*, *First Report and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920 (1998) ("*Broadcast First Report and Order*"). In addition, Attachment A includes six applications inadvertently listed on *AM Auction No. 32 Non-Mutually Exclusive Applications*, Public Notice DA 00-2142 (September 22, 2000).

⁵ *See* Broadcast First Report and Order, 13 FCC Rcd at 15927, 15980-81.

⁶ *Id.*; *see also* Orion Communications Limited v. FCC, 213 F.3d 761 (D.C. Cir. 2000).

⁷ *See* 47 C.F.R. § 73.3525.

⁸ On reconsideration of the *Broadcast First Report and Order*, the Commission expressly declined to adopt wide-ranging exceptions to the anti-collusion rule and liberally allow settlement submissions in the broadcast auction context. *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 14 FCC Rcd 8724, 8755-8756 (1999).

⁹ *See* "When and Where to File," *infra*.

Applicants who are permitted to resolve their mutual exclusivities by means of engineering solutions, described *supra*, may do so by submitting Section I and the Tech Box of Section III-A of FCC Form 301 (May 1999 version). The staff will request a complete Form 301 upon confirmation that the engineering submission does, in fact, resolve the specific mutual exclusivity. Technical amendments submitted by applicants to resolve their mutual exclusivities must be minor, as defined by the applicable rules of the AM service, and must not create new mutual exclusivity or application conflict. See 47 C.F.R. § 73.3572. Consistent with the *Broadcast First Report and Order* and 47 C.F.R. § 73.5002, such engineering submissions must resolve the mutual exclusivities for the entire group.

307(b) Determination. In the *Broadcast First Report and Order*, the Commission determined that its competitive bidding authority should be harmonized with its statutory duty under 47 U.S.C. § 307(b) to effect an equitable distribution of radio stations throughout the United States. Therefore, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications proposing to serve different communities. See *Broadcast First Report and Order*, 13 FCC Rcd at 15964. Accordingly, for those mutually exclusive groups listed in Attachment A proposing to serve different communities, a 307(b) analysis is required.

In order to evaluate the Section 307(b) considerations, the staff requires submission of additional information. Specifically, where the mutually exclusive group consists of proposals to serve different communities, each applicant within the group must submit by December 29, 2000, an amendment containing supplemental information including the following: (1) the area and population within the proposed 2 mV/m and 0.5 mV/m contours; (2) the number of stations licensed to the proposed community of license; (3) the number of stations providing protected service to the proposed community of license; (4) the population (according to the latest Census data) of the proposed community of license; (5) a description of the civic, cultural, religious, social and commercial attributes of the proposed community of license; and (6) any other information determined relevant.¹⁰ See, e.g. *Elijah Broadcasting Corporation*, 2 FCC Rcd 4468, 4480-4481 (ALJ Stirmer, 1987); *Radio Greenbrier, Inc.*, 80 FCC 2d 125, 126-135 (ALJ Lozner, 1979). The staff will dismiss, without further processing, the previously filed FCC Form 175 application and technical submission of any applicant that fails to file an amendment addressing the Section 307(b) criteria by December 29, 2000. See 47 C.F.R. § 73.3568(a)(1). Submitted Section 307(b) data must be based on the technical proposal as specified in the AM Auction filing window application. Mutually exclusive AM applicants may not change the technical proposal specified in the AM Auction filing window application, except as provided, *supra*. See *Broadcast First Report and Order*, 13 FCC Rcd at 15976. If a mutually exclusive group which is eligible to submit engineering solutions or settlements does not do so by December 29, 2000, and the applications in that group propose to serve different communities of license, each applicant within the group must submit an amendment addressing the Section 307(b) criteria by December 29, 2000.

When and Where to File: An original and four copies of all engineering proposals to resolve mutual exclusivity, settlement agreements, and Section 307(b) submissions must be filed **on or before December 29, 2000**, with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W. Room TW-A325, Washington, D.C. 20054. In addition, it is requested that a courtesy copy of all such filings be delivered to James

¹⁰ The Commission's service priorities when making a Section 307(b) determination are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters. *Second Report and Order, FM Channel Policies/Procedures*, 90 FCC 2d 88, 90-93 (1982); *recon. denied*, 56 RR 2d 448 (1984). Priorities (2) and (3) are given equal weight. These priorities were first applied in Section 307(b) determinations in the AM context by the Review Board in *Alessandro Broadcasting Co.*, 56 RR 2d 1568 (Rev. Bd. 1984).

Crutchfield, Audio Services Division, Mass Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-B450, Washington, D.C. 20554.

The staff will withhold further action on the mutually exclusive AM applications listed in Attachment A, pending submission of settlement agreements or engineering proposals to resolve mutual exclusivity and Section 307(b) supplementary information. For additional information, contact Lisa Scanlan or Ed DeLaHunt of the Audio Services Division at (202) 418-2700.

The Form 175 is available for review electronically via the Internet.¹¹ In the browser location field, enter <http://wtbwww15.fcc.gov> and then click **175 Review**. Netscape Communicator 4.73 is recommended. However, Netscape Communicator 4.5, 4.51, 4.61, 4.7, or 4.72 (Internet web browser software) can also be used. **Note:** To download Netscape Communicator 4.73 free of charge, access the Netscape download site at: <http://home.netscape.com/download/>.

For technical assistance contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support is generally available from 7 a.m. to 10 p.m. EST, Monday through Friday, 8 a.m. to 7 p.m. EST, Saturday, and 12 p.m. to 6 p.m. EST, Sunday. *All calls to the FCC Technical Support Hotline are recorded.*

This Public Notice contains the following Attachment:

Attachment A: AM Mutually Exclusive Applicants Subject to Auction

¹¹ The mutually exclusive applicants' FCC Form 301 Section I and the Section III-A Tech Box submissions filed during the AM Auction filing window are available for review in the Commission's Reference Information Center.

ATTACHMENT A

AM Mutually Exclusive Applicants Subject to Auction

The mutually exclusive AM application groups listed in this attachment encompass three categories. Processing treatment will reflect the particular category type. Specifically:

Category I: Mutually exclusive AM application groups which include at least one AM major modification applicant and are therefore entitled to settle or otherwise resolve mutual exclusivities by means of engineering solutions. If such an application group does not file a settlement agreement or engineering solution by the established deadline and the applications in that group propose to serve different communities of license, each applicant within the group must submit an amendment addressing the Section 307(b) criteria by December 29, 2000. These application groups will proceed to auction if they do not file a settlement agreement or engineering solution by the established deadline and the Section 307(b) determination is not dispositive.

Category II: Mutually exclusive AM application groups ineligible for settlement, but for which a Section 307(b) showing is required. If the Section 307(b) determination is not dispositive, these mutually exclusive AM application groups will proceed to auction.

Category III: Mutually exclusive AM application groups ineligible for settlement and for which no Section 307(b) showing is required. These groups need submit nothing at this time and will proceed to auction.

Call	Company Name	Location	Freq	MX Grp	Category
WSFN	MarMac Communications, L.L.C.	Brunswick, GA	570	AM01	I
New	Palmetto Radio Group, Inc.	Garden City, GA	570	AM01	I
New	Ronald W. Matheny dba Murphy Broadcasting System	Dock Junction, GA	570	AM01	I
New	Escanaba License Corp.	Houghton, MI	640	AM02	I
New	Jeffrey N. Eustis	Manistique, MI	650	AM02	I
WMBE	Maszka Pacer Radio, Inc.	Chilton, WI	650	AM02	I
New	Canandaigua Broadcasting, Inc.	Canandaigua, NY	650	AM03	II
New	Palmetto Radio Group, Inc.	Mooers, NY	650	AM03	II
New	Green Valley Broadcasters, Inc.	Sahuarita, AZ	670	AM04	II
New	KEMP COMMUNICATIONS, INC	Las Vegas, NV	670	AM04	II
New	Nelson Multimedia, Inc.	Las Vegas, NV	670	AM04	II
New	Guardian Communications, Inc.	Bosque Farms, NM	700	AM05	II
New	McCook Radio Group, L.L.C.	McCook, NE	700	AM05	II
New	The Watch, Inc.	Wylie, TX	700	AM05	II
New	Fargo Moorhead Radio City, L.L.C.	Fargo, ND	740	AM06	II
New	Jeffrey G. Dress	Fargo, ND	740	AM06	II
New	Pamplin Broadcasting-Washington, Inc.	Redmond, WA	740	AM06	II
New	Pamplin Broadcasting-Washington, Inc.	Hoquiam, WA	730	AM06	II
New	Pamplin Broadcasting-Washington, Inc.	Opportunity, WA	740	AM06	II
New	Kidd Communications	Fallon, NV	750	AM07	II
New	Sierra Broadcasters, LLC	Independence, CA	750	AM07	II
New	KM Communications, Inc.	South Hill, NY	750	AM08	II
New	Manchester Radio Partners	Manchester, NH	750	AM08	II
New	Romar Communications Inc.	Lansing, NY	750	AM08	II
New	Jeffrey B. Bate	Winchester, NV	790	AM09	I
New	Las Vegas Broadcasters Partnership	Las Vegas, NV	760	AM09	I
KTBA	Western Indian Ministries, Inc.	Tuba City, AZ	760	AM09	I

Call	Company Name	Location	Freq	MX Grp	Category
WKLN	Chesapeake-Portsmouth Broadcasting Corporation	Yulee, FL	770	AM10	I
New	Palmetto Radio Group, Inc.	Nassau Village-Ratliff, FL	770	AM10	I
New	Timothy C. Cutforth	Burns, WY	780	AM11	II
New	Timothy C. Cutforth	Pueblo, CO	780	AM11	II
New	MBC Grand Broadcasting, Inc.	Palisade, CO	810	AM12	II
New	Palmetto Radio Group, Inc.	Taylorville-Bennion, UT	820	AM12	II
New	Elgin FM Limited Partnership	McGregor, TX	840	AM13	I
KJON	Monroe-Stephens Broadcasting, Inc.	Carrollton, TX	850	AM13	I
New	American Community Oriented Radio Network, Inc.	Bunnell, FL	830	AM14	II
New	Dale Hendrix	Norcross, GA	830	AM14	II
New	Frank McCoy	Sandy Springs, GA	830	AM14	II
New	Garner Ministries, Inc.	Bremen, GA	830	AM14	II
New	Jeffrey N. Eustis	Dunwoody, GA	830	AM14	II
New	The MacDonald Broadcasting Company	Charleston, SC	830	AM14	II
New	The MacDonald Broadcasting Company	Orange Park, FL	830	AM14	II
New	Three Sisters Minority Communication, Inc.	Union City, GA	830	AM14	II
New	William B. McCarter	Suwanee, GA	830	AM14	II
KTRB	Bessie Grillos d/b/a The Pete Pappas Company	San Francisco, CA	860	AM15	I
New	Bessie Grillos d/b/a The Pete Pappas Company	Modesto, CA	840	AM15	I
KABN	Chester P. Coleman	Palmer, AK	840	AM15	I
New	Children's Cross Cultural Communications Foundatio	Sonoma, CA	840	AM15	I
New	Pamplin Broadcasting, Inc.	Del Rey Oaks, CA	840	AM15	I
New	Timothy C. Cutforth	Burns, WY	890	AM16	II
New	Timothy C. Cutforth	Fountain, CO	890	AM16	II
New	Horizon Broadcasting Group LLC	Prineville, OR	1060	AM17	I
New	James K. Zahn	Clovis, CA	1040	AM17	I
New	Kidd Communications	Sparks, NV	1060	AM17	I
New	KM Communications, Inc.	Fowler, CA	1040	AM17	I
New	KM Communications, Inc.	Elk Grove, CA	1030	AM17	I
New	Pamplin Broadcasting-Washington, Inc.	Union Gap, WA	1060	AM17	I
New	ROYCE INTERNATIONAL BROADCASTING COMPANY	Folsom, CA	1030	AM17	I
KTCT	Susquehanna Radio Corp.	San Mateo, CA	1050	AM17	I
New	Susquehanna Radio Corp.	Folsom, CA	1030	AM17	I
WOAP	1090 Investments, L.L.C.	Waverly, MI	1080	AM18	I
New	Great Lakes Community Broadcasting, Inc.	Mecosta, MI	1070	AM18	I
New	Richard J. Vanden Berg	Iron Mountain, MI	1080	AM18	I
New	Palmetto Radio Group, Inc.	Dilworth, MN	1100	AM19	II
New	Timothy C. Cutforth	Lamar, CO	1100	AM19	II
New	KEMP COMMUNICATIONS, INC	Las Vegas, NV	1100	AM20	II
New	Lotus Broadcasting Corp.	Las Vegas, NV	1100	AM20	II
New	Palmetto Radio Group, Inc.	Sunrise Manor, NV	1100	AM20	II
New	ROBERT E. COMBS	Boise, ID	1100	AM20	II
New	Amedia	St. Cloud, FL	1160	AM21	I
New	Brantley Broadcast Associates	Saraland, AL	1160	AM21	I
WRPM	Dowdy & Dowdy Partnership	Poplarville, MS	1170	AM21	I
New	Alpine Broadcasting Corporation	Cleveland, MO	1160	AM22	II
New	Maple River, LLC	Hornick, IA	1160	AM22	II

Call	Company Name	Location	Freq	MX Grp	Category
KEX	Citicasters Co.	Portland, OR	1190	AM23	I
KMYL	Interstate Broadcasting Systems of Arizona, Inc.	Tolleston, AZ	1190	AM23	I
New	Kidd Communications	Truckee, CA	1180	AM23	I
New	Pamplin Broadcasting-Oregon, Inc.	Jacksonville, OR	1180	AM23	I
New	Brantley Broadcast Associates	Pace, FL	1180	AM24	II
New	KM Communications, Inc.	Lizella, GA	1180	AM24	II
New	D&E Communications	Baxter, MN	1180	AM25	I
KPHN	KCBB-AM Limited Partnership	Kansas City, MO	1190	AM25	I
KKOJ	KLEVEN BROADCASTING CO. OF MINNESOTA	Jackson, MN	1190	AM25	I
New	Nelson Enterprises, Inc.	Plano, IL	1180	AM25	I
WKOX	Fairbanks Communications, Inc.	Newton, MA	1200	AM26	I
New	Sunrise Broadcasting of New York Inc.	Kingston, NY	1200	AM26	I
New	Powell Meredith Communications Company	Abilene, TX	1210	AM27	I
New	Sharon Berlin Ingles	Bixby, OK	1210	AM27	I
KGYN	Telns Broadcasting Company, Inc.	Oklahoma City, OK	1210	AM27	I
New	Jeffrey B. Bate	Mesquite, NV	1250	AM28	II
New	Jeffrey N. Eustis	Johnstown, CO	1250	AM28	II
New	Go and Tell, Inc.	Central Point, OR	1340	AM29	II
New	Lyle S. Reynolds	Central Point, OR	1340	AM29	II
New	Oregon State Board of Higher Education/S. OR Univ	Mt. Shasta, CA	1340	AM29	II
New	Alpine Broadcasting Limited Partnership	Taos, NM	1340	AM30	III
New	Garcia, Richard L. and Cardova, Darren	Taos, NM	1340	AM30	III
New	Conner Media Corporation	Jacksonville, NC	1400	AM31	I
WBTB	Eastern Carolina Broadcasting Co., Inc.	Pine Knoll Shores, NC	1400	AM31	I
New	J.L. Richardson	Hartman, AR	1460	AM32	I
KKTK	M&M Broadcasters, Ltd.	Burleson, TX	1460	AM32	I
KTNO	Mortenson Broadcasting Company of Canton, LLC	University Park, TX	1440	AM32	I
New	Andrew Johnson	Winchester, NV	1500	AM33	II
New	Jeffrey B. Bate	St. George, UT	1490	AM33	II
New	Dominant Communications Corp. of MS	Flowood, MS	1550	AM34	I
New	Flag Radio, Inc.	Bunnell, FL	1550	AM34	I
WINV	WGUL-FM, INC.	Iverness, FL	1560	AM34	I
KZIZ	KRIZ BROADCSSTING, INC.	Pacific, WA	1560	AM35	I
New	Pamplin Broadcasting-Washington, Inc.	Burbank, WA	1560	AM35	I
New	CTC Media Group, Inc	Winterville, NC	1570	AM36	I
WGSR	RJM Communications, Inc.	Orange Park, FL	1570	AM36	I
New	mark himmler	Waterford, PA	1580	AM37	II
New	R. J. Stalvey	Georgetown, SC	1580	AM37	II
New	Alvin Lou Media, Inc.	Spring Valley, NV	1590	AM38	II
New	Powell Meredith Communications Company	Las Vegas, NV	1590	AM38	II
New	Victor A. Michael, Jr.	Cheyenne, WI	1590	AM38	II
New	Alvin Lou Media, Inc.	Waipahu, HI	1600	AM39	II
New	KM Communications, Inc.	Makaha, HI	1600	AM39	II