



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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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.

The Mass Media Bureau (“MMB”) and the Wireless Telecommunications Bureau (“WTB”) announce an auction filing window for certain AM station construction permit applications. The filing window will open on January 24, 2000 and close on January 28, 2000. The Commission will not accept AM minor change construction permit applications between December 24, 1999 and January 21, 2000 and, with certain exceptions explained below, during the filing window.

Scope: The window is available for proposals for new AM stations and major modifications to authorized AM facilities.¹ This includes those new AM station and major modification applications that were received on or before November 26, 1997 but for which no “A” cut-off list had been released by that date (“Frozen AM Applications”).² Also on file are a number of new AM station and AM major modification applications filed after November 26,

¹ See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920 (1998) (“*Broadcast First Report and Order*”) (granting Bureaus delegated authority to hold separate auctions for each type of broadcast service).

² See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses, Notice of Proposed Rulemaking*, 12 FCC Rcd 22363, 22409 (1997) (establishing freeze on the filing of applications for construction permits for new stations and for major changes to existing facilities in all commercial broadcast services) (the “*Competitive Bidding NPRM*”).

1997 with “freeze waiver” requests (“Freeze Waiver Applications”). These applicants also may participate in the auction filing window. Freeze Waiver Applications have not been protected from subsequently filed minor change applications during the freeze, and this policy will continue through December 23, 1999. Accordingly, Freeze Waiver Applications must protect fully all minor change applications filed on or before December 23, 1999 in order to be considered in the upcoming window, the same requirement that will apply generally to new station and major change proposals submitted for the first time in the window.³ The window will not be available for new AM expanded band stations or for major changes in existing AM expanded band stations.⁴

The window also will be available for any minor change that is contingent on the grant of a pending license application for WOWO, Fort Wayne, Indiana (File No. BL-981230AE) (the “WOWO Application”) or mutually exclusive with any such contingent proposal on file by the close of the window.⁵ At least one major change and six minor change applications have been filed that are contingent on the grant of the WOWO Application. It appears that certain of these applications are mutually exclusive. Each is subject to dismissal pursuant to Section 73.3517.⁶ MMB will retain on file all applications that are contingent on the grant of the WOWO license application provided that they are on file by the close of business on the date of release of this Public Notice.⁷ However, it will treat these applications as having been filed during the window, *i.e.*, will not accord first come-first served cut-off rights to any of these plainly unacceptable modification applications.⁸ This procedure will promote orderliness and fairness in the Commission’s application procedures. We are particularly concerned about the rights of those potential applicants that have chosen to adhere to the Commission’s procedural and substantive rules, and accordingly, have not filed applications contingent on the grant of the WOWO Application. These potential applicants must follow the window filing procedures set forth below in order to be considered.

³ Frozen AM Applications that were technically acceptable at the time of filing will be entitled to consideration with any subsequently filed and mutually exclusive minor change application. New and major change applications may be filed during the window that are in conflict, either directly or indirectly, with a Frozen AM Application and such applications will be considered under our competitive bidding procedures. A minor change proposal in conflict with a Frozen AM Application must be filed by December 23, 1999.

⁴ See *Memorandum Opinion and Order*, 14 FCC Rcd. 8724, 8741 n. 45.

⁵ Minor change applications filed during the window that are not within this category will be dismissed.

⁶ These include applications for Station KMYL, Tolleson, Arizona (File No. BP-990713AC); Station KEX, Portland, Oregon (File No. BP-990624AB); Station KDAO, Marshalltown, Iowa (File No. BP-990601AB); Station KKOJ, Jackson Minnesota (File No. BP-990525AB); and Station WNWC, Sun Prairie, Wisconsin (File No. BP-990521BH). By separate action the MMB is simultaneously granting reconsideration of its action dismissing the application for Station KPHN, Kansas City, Missouri for the sole purpose of permitting its consideration with and under the same conditions as these other listed applications.

⁷ Minor change applications filed after the release of this Public Notice and prior to the opening of the window will be dismissed.

⁸ As explained below, the failure to file FCC Form 175 for a pending application that is contingent on the grant of the WOWO Application will result in the dismissal of such pending application.

Minor Change Application Freeze. The *Competitive Bidding NPRM* freeze was limited to new station and major change applications and MMB has continued to process minor change applications under its first come-first served processing rules during the past two years. However, the Commission will not accept applications for construction permits for minor changes in authorized AM facilities between December 24, 1999 and January 21, 2000. The timing of this limited freeze provides existing AM stations an additional opportunity to file minor change applications prior to the window. The freeze also will eliminate the risk that a potential window filer's proposal is blocked by the filing of a mutually exclusive minor change application immediately prior to the window.

Participation. Those wishing to participate in the auction *must*:

- File electronically a short form application (FCC Form 175) by 5:30 p.m. Eastern Standard Time, January 28, 2000. See Attachments A, B, and C for more information regarding the completion of Form 175, including information on bidding credits and designated entities.
- If a Form 301 application is not currently on file: File in triplicate with the Secretary of the Commission Section I and the Tech Box of Section III-A of FCC Form 301 (May 1999 version). A printed copy of Form 175 should be attached to the Form 301 submission. The Form 301, with the attached Form 175, is due to the Commission in hard copy by 5:30, Eastern Standard Time, January 28, 2000. No fee is required. See Attachment A for more information regarding the completion of Form 301. Note: If a Form 301 application is currently pending, no filing with the Secretary is required. However, applicants should specify, if known, the file number of the application in Form 175, Exhibit E ("Miscellaneous Information").
- Comply with all provisions outlined in this Public Notice and applicable rules of the Commission.

The failure of any applicant to timely file a Form 175 for any pending application within the scope of this auction filing window will result in the dismissal of such application. No consideration will be given any proposal for which the required engineering information is not on file by the close of the window.

For additional information, contact Peter Doyle, James Bradshaw or Lisa Scanlan at the Audio Services Division, Mass Media Bureau at (202) 418-2700.

List of Attachments:

- Attachment A: Pre-Auction Procedures
- Attachment B: Guidelines for Completion of FCC Form 175 and Exhibits
- Attachment C: Eligibility for New Entrant Bidding Credit; Ownership Disclosure Requirements; Consortia and Joint Bidding Arrangements
- Attachment D: Electronic Filing and Review of the FCC Form 175
- Attachment E: Accessing the FCC Network Using Windows 95/98

ATTACHMENT A

PRE-AUCTION PROCEDURES

A. General Filing Requirements

As discussed in the *Broadcast First Report and Order*, the Commission will require applicants for AM stations to file, in addition to their FCC Form 175 short form applications, the engineering data contained in the FCC Form 301. Such engineering information is required so that the staff can make mutual exclusivity determinations. A comprehensive review of applicants' technical proposals will be undertaken by the staff following the submission of long-form applications by winning bidders post-auction, or by applicants identified as non-mutually exclusive.

(1) Applications for new AM stations, AM major modification applications, and permissible minor modification applications filed during the AM window filing period.

Prospective applicants for new AM stations, and AM major or permissible minor modifications that do not have an FCC Form 301 currently pending before the Commission must file Section I and the Tech Box from Section III-A of FCC Form 301 (May 1999 version) **in addition to the FCC Form 175. This Form 301 must be submitted in triplicate and filed with the Secretary of the Commission, 445 12th Street, SW, Washington, DC 20554, between January 24, 2000 and by 5:30 p.m. EST on January 28, 2000.** Late applications will not be accepted. No application filing fee is required. However, applications for new AM stations or for AM major modifications within the AM expanded band may not be filed during this AM auction filing window. To facilitate coordination, each Form 301 application submitted during the AM filing window should include a printed copy of the electronically filed FCC Form 175. A courtesy copy of any Form 301 application filed during the window should also be sent to James R. Crutchfield, Audio Services Division, Room 2-B450, at the above street address.

(2) Previously filed Form 301 applications, including applications for new AM stations, AM major modifications, mutually exclusive AM minor modifications, and freeze waiver requests

All applicants for new AM stations and AM major modifications with an FCC Form 301 currently on file with the Commission as of the release of this Public Notice, along with mutually exclusive minor modification applications filed before December 23, 1999, **must electronically file an FCC Form 175 prior to January 28, 2000, 5:30 p.m. EST.** Failure of any applicant to submit FCC Form 175 will result in the dismissal of that applicant's pending FCC Form 301 application(s). As stated in the *Broadcast First Report and Order*, 13 FCC Rcd at 15960, ¶110, applications pending before the Commission that have never been subjected to competing applications are required to confirm their intent in participating in an auction as part of the first general window for the relevant service. No corresponding FCC Form 301 engineering data will be required to be filed with the short-forms of these pending AM applications unless applicants desire to amend the technical proposals that will be used to determine mutual exclusivity.

(3) New and Major Change Applications filed after Public Notice release date

Any Form 301 application for a new AM station or for a major modification of an AM station filed after the release of this public notice, but before January 24, 2000, will be dismissed without further consideration. Any such applicant should instead file Section I and the Tech Box from Section III-A of FCC Form 301 in triplicate with the Secretary of the Commission during the auction window filing period, *along with FCC Form 175*, as indicated in # (1) above.

B. Short-Form Application (FCC Form 175) Filing Procedures -- Due January 28, 2000, 5:30 p.m. EST

All applicants must electronically submit an FCC Form 175 application no later than 5:30 p.m. EST on January 28, 1999. Late applications will not be accepted. There is no application fee required when electronically filing an FCC Form 175.

(1) Electronic Filing

All Form 175 applications must be filed electronically.¹

Applicants may file Form 175 applications electronically beginning 9:00 a.m. EST January 24, 2000. The system generally will be open for filing on a 24-hour basis. The Form 175 filing window will remain open until 5:30 p.m. EST on January 28, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on January 28, 2000. Information about the electronic filing of the FCC Form 175 application is included as Attachment D to this Public Notice. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service are 8 a.m. - 6 p.m. EST, Monday - Friday.

(2) Completion of the FCC Form 175

Applicants should carefully review 47 C.F.R. Sections 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Detailed instructions for completing the FCC Form 175 are in Attachment B of this Public Notice. Form 175 is not submitted to the FCC until an applicant receives confirmation from the filing system that the form has been received by the Commission.

¹ See *Third Report and Order*, 13 FCC Rcd 374, 410-11, ¶¶ 59-62; 47 C.F.R. § 1.2105(a).

C. Prohibition of Collusion

To insure the competitiveness and integrity of the auction process, the Commission's Rules prohibit competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition becomes effective at the short-form application deadline, and ends on the post-auction down payment due date. Applicants for major modifications and new stations that are mutually exclusive, may communicate with each other for the purpose of resolving conflicts by means of engineering solutions or settlements, but only during a time period as prescribed by the Bureaus. The precise period for pre-auction settlement of competing applications involving major modifications and those competing with them, will be specified in a later public notice.² Bidders competing for the same construction permit(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or technical consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.³ The Bureaus, however, caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.⁴ However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement in their FCC Form 175 applications.⁵

By electronically submitting their FCC Form 175 short-form applications, applicants are certifying their compliance with Sections 1.2105 (c) and 73.5002. In addition, Section 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission, as promptly as possible and in any event within 30 days, of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

² See *Broadcast First Report and Order* at ¶ 17.

³ See, *e.g.*, "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 341 (1998); Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("*Nevada Wireless*").

⁴ See *Nevada Wireless*, *supra* note 9 at 11978, ¶ 13.

⁵ See 47 C.F.R. § 1.2105 (c).

D. Application Processing and Minor Corrections

After the deadline for filing the applications has passed, the FCC will process all timely and complete filings, to determine which are mutually exclusive, and will subsequently issue a public notice identifying: (1) those applications which are mutually exclusive (including FCC reference numbers and the construction permits for which they applied); (2) those applications rejected; and (3) those applications that have minor defects that may be corrected, and the deadline and instructions for filing such corrected applications. Applicants identified as non-mutually exclusive will then be required to submit FCC Form 301.

As described more fully in the Commission's Rules, after the January 28, 2000 filing deadline, an applicant may make only minor non-technical corrections to its FCC Form 175 application. Applicants will not be permitted to make major modifications to their applications. *See* 47 C.F.R. Section 1.2105. For this reason it is critical that all applicants carefully review their FCC Form 175 submissions prior to the close of the filing window.

(1) Electronic Review of FCC Form 175

The FCC Form 175 review software may be used to review and print an applicant's FCC Form 175 application. Prior to the filing deadline, applicants may only review their own completed FCC Form 175. Applicants may review their own and other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice concerning the status of the applications. Because the forms are made public, it is important that an applicant does not include its Taxpayer Identification Number (TIN) on any Exhibits to its FCC Form 175 application. There are no fees for accessing the Form 175 filing or review system.

Attachment B

GUIDELINES FOR COMPLETION OF FCC FORM 175 AND EXHIBITS

A. FCC Form 175

Applicants should especially note the following:

Applicant Address: Applicants must submit a street address (not a Post Office box number), suitable for mail or private parcel delivery.

Applicant Classification: Applicants must indicate their legal classification. The FCC Form 175 requires the applicant to classify itself as an individual, joint venture, partnership, trust, corporation, consortium, association, limited liability company (LLC) or government entity.

Applicant Status: Applicants are requested to indicate their status as a rural telephone company, minority-owned business and/or women-owned business, so that the FCC can monitor its performance in promoting economic opportunities for these designated entities.

Bidding Credit Eligibility: Applicants that qualify for the New Entrant Bidding Credit must enter the applicable bidding credit (25 percent or 35 percent) in the bidding credit eligibility item on the Form 175. Applicants are advised that this is the sole opportunity to select "New Entrant" status and claim a bidding credit level (if applicable). There is no opportunity to change the election once the initial short-form filing deadline passes on January 28, 2000.

Licenses/Construction Permits: Applicants that do not have a Form 301 application currently on file must indicate construction permit preferences by filing Section I and the Tech Box from Section III-A of FCC Form 301. If an applicant has a Form 301 on file, the applicant can facilitate the process by submitting, in Exhibit E to the FCC Form 175, the File Number of the pertinent FCC Form 301 broadcast application currently pending before the Commission.

Authorized Bidders: Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place or withdraw bids for the applicant during the auction.

Certifications: Applicants should carefully read the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Contact person/address: If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for an address, telephone number, fax number, and e-mail address. All written communication and registration information will be directed to the applicant's contact person at the address specified on the FCC Form 175. Applicants must provide a street address; no P.O. Box addresses may be used.

Completeness: Applicants must submit all information required by the FCC Form 175 and by applicable rules. Failure to submit required information by the resubmission date will result in dismissal of the application and inability to participate in the auction. *See* 47 C.F.R. § 1.2105(b).

NOTE: Applicants must press the "Submit Form 175" button on the "Submit" page to successfully submit their FCC Form 175.

Continuing Accuracy: Each applicant is responsible for the continuing accuracy and completeness of information furnished in the FCC Form 175 and its exhibits. *See* 47 C.F.R. § 1.65. Applicants are reminded that they consent to be audited in the certification section of the FCC Form 175 (see certification item number 6).

B. Exhibits and Attachments

In addition to the FCC Form 175 itself, applicants must submit additional information required by the FCC's rules. Although the FCC does not require a particular format for this information, it has developed the following guidelines that will facilitate the processing of short-form applications. The FCC encourages applicants to submit this information using the following format.

Exhibit A -- Applicant Identity and Ownership Information: Section 73.5002 of the broadcast competitive bidding procedural rules specifies the bidding procedures, certification requirements, and anti-collusion rules applicable to applications for commercial broadcast services that are subject to auction. Subsection (b) of that rule requires the timely submission of short-form applications along with all required certifications, information and exhibits pursuant to the provisions of 47 C.F.R. § 1.2105(a). Section 1.2105, in turn, requires the disclosure on the short-form of applicant ownership information as set forth in Section 1.2112. Specifically, 47 C.F.R. § 1.2105(a)(2)(ii) requires each applicant to fully disclose the real party or parties-in-interest, and the addresses and citizenship of the parties, in an exhibit to its FCC Form 175 application. Furthermore, each applicant applying for a New Entrant Bidding Credit must provide detailed ownership information for itself and its attributable interest holders, as defined by Section 73.3555 of the Commission's rules and by Note 2 to that Section. Regardless of whether a New Entrant Bidding Credit is being sought, all applicants must provide the identification and ownership information.

Exhibit B -- Agreements with Other Parties/Joint Bidding Arrangements: Applicants must attach an exhibit identifying all parties with whom they have entered into any agreements, arrangements or understandings of any kind that relate to the licenses being auctioned, including any agreements relating to the post-auction market structure. *See* 47 C.F.R. § 1.2105(a)(2)(viii).

Certification (4) to the FCC Form 175 requires the applicant to certify that it will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding bid amounts, bidding strategies, or the particular licenses the applicant will or will not bid. *See* 47 C.F.R. § 1.2105(a)(2)(ix). *Except to the extent provided in 47 C.F.R. § 73.5002 (d)*, the prohibition of collusion set forth in 47 C.F.R. § 1.2105 (c) becomes effective upon the filing of short-form applications. To prevent collusion, the Commission's Rules *generally* prohibit communication among applicants for the same mutually exclusive permits or licenses between the initial short-form applications filing deadline and the deadline for down payments on licenses won, when such communication concern bids, bidding strategies, or settlements. 47 C.F.R. § 1.2105(c).

Exhibit C -- Status as a New Entrant Bidding Credit Recipient: An applicant claiming that it qualifies for a 35 percent new entrant credit must certify under penalty of perjury that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications, as defined in 47 C.F.R. § 73.5008. With respect to those qualifying for a 25 percent credit, the applicant must provide a certification under penalty of perjury that neither it nor any of its attributable interest holders have attributable interests in more than three media of mass communications, as defined in 47 C.F.R. § 73.5008. In addition, applicants claiming a 25 percent credit shall identify and describe such media of mass communications. *See* 47 C.F.R. §§ 73.5007 and 73.5008.

Exhibit D -- Information Requested of Designated Entities: Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(b)(2), or that are rural telephone companies, as defined in 47 C.F.R. § 1.2110(b)(3), may attach an exhibit regarding this status. This information, in conjunction with the information in the Applicant Status item, will assist the Commission in monitoring the participation of these "designated entities" in its auctions.

Exhibit E – FCC Form 301 File Numbers or Miscellaneous Information:

If an applicant has a long form 301 on file, the applicant can facilitate the process by submitting the File Number of the pertinent FCC Form 301 broadcast application currently pending before the Commission.

Likewise, applicants wishing to submit additional information may do so in Exhibit E.

The electronic Form 175 has functionality allowing the applicant to upload exhibits/attachments with the Form 175 for FCC review. Once the applicant has uploaded the attachment, that attachment will be converted by the auctions system into an Adobe PDF format and become available for the applicant's review.

If an applicant finds that an attachment has not converted properly to Adobe PDF format, the applicant should take the following steps:

- 1) *Simplify the formatting of the file. For example, if using a Table structure in a WordPerfect document, remove the Table structure leaving the contents of the table, re-save the document.*
- 2) *Re-upload the attachment.*
- 3) *Delete the failed attachment.*

NOTE: In order to protect their privacy, applicants should not list their TIN/SSN numbers on any Exhibits to their FCC Form 175s.

ATTACHMENT C

ELIGIBILITY FOR NEW ENTRANT BIDDING CREDIT; OWNERSHIP DISCLOSURE REQUIREMENTS; CONSORTIA AND JOINT BIDDING ARRANGEMENTS

ELIGIBILITY FOR NEW ENTRANT BIDDING CREDIT

A. General Eligibility Criteria

To fulfill its obligations under Section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for auction applicants with no, or very few other media interests.

(1) Determination of Eligibility for Bidding Credit

For purposes of determining which entities qualify for a New Entrant Bidding Credit, the following information should be considered: the interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications at the time of the short-form application filing deadline.

The interests held by the bidder, and by any individual or entity with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include: all officers and directors of a corporate bidder; any owner of 5% or more of the voting stock of a corporate bidder; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and all members of a limited liability company, unless insulated.¹ In cases where a bidder's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.² Bidders should note that the mass media attribution rules were recently revised.³

¹ See 47 C.F.R. § 73.3555 Note 2.

² See *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992).

³ See *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, FCC 99-207 (rel. August 6, 1999) (prior history omitted).

Bidders are also reminded that, by *Memorandum Opinion and Order* released August 5, 1999,⁴ the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in a bidder shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33% of the total asset value of the bidder, even if such an interest is non-voting.⁵

Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.⁶ However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit.⁷ A medium of mass communications is defined in 47 C.F.R § 73.5008 (b).

The bidder's attributable interests shall be determined as of the short form (FCC Form 175) filing deadline. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline.⁸

(2) Application Showing

Applicants are required to file supporting documentation as Exhibits A and C to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.⁹ In addition, in those cases

⁴ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, 64 Fed. Reg. 44856 (August 18, 1999).

⁵ See 47 C.F. R. § 73.5008.

⁶ Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 C.F.R. § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

⁷ *Memorandum Opinion and Order on Reconsideration* at ¶ 75.

⁸ The fact that, on the short form filing deadline, a bidder has a pending or granted application to assign or transfer control of a media interest shall not be sufficient to avoid attribution. Bidders must have consummated the transaction by the short form filing deadline to avoid attribution.

⁹ See 47 C.F.R. § 1.2105.

where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C attesting to the eligibility of the bidder for the level of Credit claimed.

B. Bidding Credits

Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 C.F.R. § 73.5007,¹⁰ are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 C.F.R. § 73.5008; and,
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 C.F.R. § 73.5008; and,
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 C.F.R. § 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, have attributable interests in more than three mass media facilities.

Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 C.F.R. § 73.3555 and Note 2 of that section. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control its license or construction permit to an entity not qualifying for the same level of bidding credit.¹¹

¹⁰ Section 73.5007 of the Commission's rules was most recently revised pursuant to the *Memorandum Opinion and Order on Reconsideration*. The revised version of the rule became effective on July 6, 1999.

¹¹ See 47 C.F.R. § 73.5007(c).

OWNERSHIP DISCLOSURE REQUIREMENTS

All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information set forth in Sections 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file in Exhibit A, a full and complete statement of the ownership of the bidding entity.¹² The ownership disclosure standards for the short form are set forth in Section 1.2112 of the Commission's rules. Bidders should note that, under Section 1.2112 (a)(4), the short form must list, *inter alia*, the names, addresses and citizenship of any party holding options permitting the acquisition of a ten percent or greater equity interest in the application, as well as the amount and percentage held.

Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so in Exhibit E -Miscellaneous Information – to the FCC Form 175.

CONSORTIA AND JOINT BIDDING ARRANGEMENTS

Applicants will be required to 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. *See* 47 C.F.R. §§ 1.2105(a)(2)(viii); 1.2105(c)(1). Applicants will also be 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 bids, bidding strategies, or the particular construction permits on which they will or will not bid. *See* 47 C.F.R. § 1.2105(a)(2)(ix). In cases where such consortia or joint bidding arrangement are contemplated, applicants must submit an Exhibit B to the FCC Form 175.

¹² Section 73.5002 of the broadcast competitive bidding procedural rules specifies the bidding procedures, certification requirements, and anti-collusion rules applicable to applications for commercial broadcast services that are subject to auction. Subsection (b) of that rule requires the timely submission of short-form applications *along with all required certifications, information and exhibits pursuant to the provisions of 47 C.F.R. § 1.2105(a)*. Section 1.2105, in turn, requires the disclosure on the short-form of applicant ownership information as set forth in Section 1.2112.

Attachment D

ELECTRONIC FILING AND REVIEW OF THE FCC FORM 175

Applicants must submit their FCC Form 175 applications electronically using the Commission's remote access system. This system will generally be available 24 hours per day. FCC Form 175 applications must be submitted and confirmed by **5:30 p.m. ET on Friday, January 28, 2000**. Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants must press the **175 Submit** button on the *Submit* page to successfully submit their FCC Form 175. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. Dates and filing instructions for the resubmission period will be released in a subsequent Public Notice. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

Applicants will need to meet the following minimum hardware and software requirements:

Minimum Hardware Requirements

- CPU: Intel Pentium
- RAM: 16 MB (more recommended if you have multiple applications open)
- Modem: v.32bis 14.4kbps Hayes compatible modem or faster (recommend 56.6 Kbps)
- Monitor: VGA or above
- Mouse or other pointing device

Minimum Software Requirements

- Operating System: Microsoft Windows 95 or 98
- PPP (Point-to-Point Protocol) Dialer: Use the Dial-Up Networking feature included with Windows 95/98
- Web Browser: Netscape Communicator 4.7 is recommended. However, you can also use Netscape Communicator 4.5, 4.51, or 4.61 (Internet web browser software).

Note: To download Netscape Communicator 4.7 free of charge, access the Netscape download site at <http://home.netscape.com/download/>

- PDF Viewer: Adobe Acrobat Reader 3.0 or higher (available at <http://www.adobe.com>)
- If you wish to use the download feature in the Form 175 Review, you will need a .tar file extraction utility, e.g., Winzip (available at <http://www.winzip.com>) or Pkzip for Windows (available at <http://www.pkware.com/download.html>).

Submitting FCC Form 175 Applications

To submit FCC Form 175 applications electronically, you must first connect to the FCC Network via a toll-free 800 phone number, (800-378-7435) using Dial-Up Networking. Dial-Up Networking establishes a point-to-point connection from your PC to the FCC Network. *This point-to-point connection is not routed through the Internet.*

Note: For instructions on how to connect to the FCC Network using Dial-Up Networking, see the *Accessing the FCC Network Using Windows 95/98* attachment.

After you have connected to the FCC Network, start your Netscape Web browser. In your browser's *Location* field, enter ***http://wtbwww04.fcc.gov*** and then click **175 Submit**.

When uploading attachments in FCC Form 175 Submission, applicants may use a variety of file formats -- including Word, WordPerfect, Adobe PDF, Excel, Lotus, and ASCII text -- and should verify that the files contain all exhibit information. Graphics file uploads (e.g., *.bmp*, *.tiff*, *.jpg*) are not supported, and graphics images should not be imported into any word processing files that are uploaded.

After you upload an attachment, check to see if it converted properly by selecting the PDF filename in the rightmost column. The conversion process may take up to thirty minutes. If you are unable to read this file after it has been converted, please do the following:

1. Re-upload the attachment.
2. If the file still has not converted properly, then simplify the formatting of the file.

For example, if you are using a Table structure in a WordPerfect document, remove the Table structure and leave the contents of the table, then re-upload the attachment.

After you have successfully re-uploaded an attachment, please delete the old, unreadable attachment files.

Applicants must press the **Submit Form 175** button on the *Submit* page to successfully submit their FCC Form 175. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

When you have finished, exit your Web browser; then disconnect from the FCC Network.

Reviewing FCC Form 175 Applications

Once the FCC has completed the 175 Review process, you can review FCC Form 175 applications electronically via the Internet. Start your Netscape Web browser. In your browser's *Location* field, enter ***http://wtbwww15.fcc.gov*** and then click **175 Review**.

Note: Applicant information will not be available in FCC 175 Review until the Commission has completed reviewing the Form 175 and Form 301 as indicated by release of a Public Notice.

Help

For technical assistance with installing or using FCC software, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday, from 8 a.m. to 6 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

Attachment E

ACCESSING THE FCC NETWORK USING WINDOWS 95/98

This attachment describes how to access the FCC Network from a system that is running the Microsoft Windows 95 or Microsoft Windows 98 operating system. This involves configuring dial-up network access and then performing the dial-up procedure. Dial-up access to the FCC Network is required to submit FCC Form 175 applications electronically or use the FCC Remote Access System.

Note: Dial-up access to the FCC Network is *not* required to review FCC Form 175 applications. You can perform that function from the Internet, by entering location <http://wtbwww15.fcc.gov/> on your Netscape Web browser and clicking the **175 Review** button.

Conventions

The instructions in this section use the following typographical conventions:

- bold** Represents objects on the screen that you click with the mouse pointer, including buttons, Internet links, icons, tabs, menu items (e.g., **Cancel** button, **Auctions** link, **Save** option in the File menu).
- italic* Represents field names or areas of a screen (e.g., *Applicant* field, *Selected Licenses* area of a screen).
- bold italic** Represents characters that you must type exactly as they appear in the instructions. For example, if you are instructed to type ***http://wtbwww03.fcc.gov***, you should type all of the characters exactly as they are printed.

SMALL CAPS Represents keys on the keyboard (e.g., ENTER, CTRL, ESC).

Note: Throughout these instructions, “enter” means to type the appropriate information and then press the ENTER key.

Configuring Dial-Up Networking

1. To start dial-up networking:
 - a. Click the Windows 95/98 **Start** button.
 - b. Click the **Programs** option to display the Programs menu.
 - c. Click the **Accessories** option to display the Accessories menu.

- d. In Windows 95, click **Dial-Up Networking**.
In Windows 98, click **Communications**, then **Dial-Up Networking** .

If Dial-Up Networking is not an option on your Accessories menu, you should install it from your Windows 95/98 CD or diskettes.

2. When the Dial-Up Networking window appears, double-click the **Make New Connection** icon.

The Make New Connection window appears.

3. If you are connecting to submit FCC Form 175 applications, type **FCC Auctions 800#** in the field titled *Type a name for the computer you are dialing*.
4. In Windows 95, click the down arrow at the right of the *Select a modem* field and select your modem from the menu of available modems.

In Windows 98, click the down arrow at the right of the *Select a device* field and select your modem from the menu of available devices.

If your modem does not appear on this list, you must install your modem driver according to the modem manufacturer installation procedures, which are usually described in your modem's user manual.

5. Click the **Next** button.
6. If you are connecting to submit FCC Form 175 applications, type **800** and **378-7435** in the *Area Code* and *Telephone Number* fields, respectively.
7. Verify that the correct country is selected in the *Country code* field.

If necessary, click the down arrow at the right of the *Country code* field and select the appropriate country from the menu of available countries.

8. Click the **Next** button.
9. Click the **Finish** button.

An icon labeled *FCC Auctions 800#* appears in the Dial-Up Networking window.

10. Verify that properties are configured correctly before attempting a dial-up session. Put the mouse pointer on the FCC Auctions icon that you wish to configure and click the **right** mouse button to display a menu. Click **Properties** from the menu.
11. Click the **Configure** button. Click the **Options** tab at the top of the Properties window.

12. In the *Connection control* area of the Options tab, verify that *neither* option is selected. If either option is selected, click the check box at the left of the option to deselect it. Then click **OK**.
13. In Windows 95, click the **Server Type...** button.

In Windows 98, click the **Server Types** tab at the top of the Properties window.
14. In the *Advanced Options* area, verify that only *Enable software compression* is selected. If it is not selected, click the check box at the left of the option to select it. If either of the other options is selected, click the check box to deselect it.
15. In the *Allowed Network Protocols* area, verify that only *TCP/IP* is selected.

If it is not selected, click the check box at the left of the option to select it. If either of the other options is selected, click the check box to deselect it.
16. Click the **TCP/IP Settings** button. On the TCP/IP Settings window, select *Server assigned IP address* at the top and *Specify name server addresses* in the area midway down the window.
17. Type **165.135.22.249** as the Primary DNS.

Ensure that these two options are checked:
 - Use IP header compression
 - Use default gateway or remote network
18. Click **OK** on the TCP/IP Settings window and the Server Type window.
19.
 - a. Click the Windows 95/98 *Start* button, then click the *Settings* option to display the Settings menu.
 - b. Click *Control Panel* and then double-click the *Network* icon.
 - c. Highlight the TCP/IP Protocol and click *Properties*. If there are multiple TCP/IP protocols, highlight TCP/IP --> Dial-Up Adapter and click *Properties*.
 - d. Click the *DNS Configuration* tab.
 - e. Select *Enable DNS*. Type **bidder** in the *Host* box, type **fcc.gov** in the *Domain* box, then type **165.135.22.249** in the DNS Server Search Order box and click the *Add* button.
 - f. Click *OK* on the TCP/IP Properties windows, then click *OK* on the Network windows.

- f. If you are prompted to restart your computer, click *Yes* to restart, then begin the Dial-Up Procedure.

Dial-Up Procedure

1. If the Dial-Up Networking window is not currently open, do the following:

- a. Click the Windows 95/98 **Start** button.
- b. Click the **Programs** option to display the Programs menu.
- c. Click the **Accessories** option to display the Accessories menu.
- d. In Windows 95, click **Dial-Up Networking**
In Windows 98, click **Communications**, then **Dial-Up Networking**.

The Dial-Up Networking window appears.

2. In the Dial-Up Networking window, double-click the **FCC Auctions 800#**.
3. Click the **Connect** button on the window. *Do not enter User name and Password* .

The Connection window appears, indicating the status of your connection as your modem dials into the system. This window must remain running during your dial-up session. You may minimize the window, if you wish.

If your modem fails to establish a connection, please see the *Troubleshooting* section below.

4. Once the connection is established, open your Web browser.
5. In your browser's *Location* field, enter the appropriate Universal Resource Locator (URL) as follows:
 - For FCC Form 175 Submit, enter ***http://wtbwww04.fcc.gov*** (primary location) or ***http://wtbwww34.fcc.gov*** (secondary location)

If nothing appears in your Web browser, please see the *Troubleshooting* section below.

6. When you have finished, exit the Web browser, then click the **Disconnect** button on the Connection window to end your dial-up session.

Troubleshooting

Following are problems you may encounter and possible solutions for resolving or isolating them.

Modem does not respond or does not connect

1. Confirm that all physical connections for the modem are present.
2. Confirm that the phone line is active by connecting it to a telephone and checking for a dial-tone.
3. Confirm that the correct modem driver is installed for your modem.
4. Confirm that the number the modem is dialing is correct.
5. Confirm that the modem prefix, if any, is correct.

Modem dials and connects, but nothing appears when you enter the Location in the Web browser

1. Verify the Dial-Up Networking settings specified in the Configuring Dial-Up *Networking* section.
2. Confirm that your Web browser is not using proxies:
 - a) On your browser, click the *Preferences* option in the Edit menu.
 - b) In the Category area at the left, double-click *Advanced*.
 - c) Click the Advanced structure's *Proxies* option.
 - d) Click the radio button labeled *Direct connection to the Internet*.
 - e) Click the **OK** button at the bottom of the window.

Receive an Internal Server error in the Web browser

1. Confirm that the *Location* is correct.
2. Confirm that *Java* and *JavaScript* are enabled in your Web browser, and confirm that *Cookies* is set to Accept All.

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