

Section III, Item 7 (previously Item 6), has been revised to eliminate the requirement that full power AM and FM licensees submit an exhibit to demonstrate compliance with the Commission's maximum permissible radio frequency ("RF") electromagnetic exposure limits, in the event that they are unable or not eligible to use the RF worksheets contained in the instructions of the Form. All applicants continue to be required to certify that their facilities comply with the Commission's maximum permissible RF limits. The elimination of the exhibit requirement for radio broadcasters, conforms the question so it is now consistent with the requirements for licensees of broadcast television stations, translator (FM and TV stations), and low-power FM stations, who are not required to submit an exhibit. The instructions for Section III, Item 7 and Worksheet #1 Environmental have been revised accordingly.

Section V, Item 4 has been revised to clarify that Low Power TV ("LPTV") stations still need to file Form 396 with the renewal application, but that they may or may not need to file a public file report and post it to their Web site. The word "as" has been replaced with the word "if." The old version stated that stations are required to certify that they have created a public file report and posted it to their Web sites "as" required by regulation. The instructions have been revised to explain that for Section V, Item 4, only LPTV stations that are part of a station employment unit with full-power stations, where the unit employs at least five or more full-time employees, needs to file a public file report and post it to the station Web site. Other LPTV stations do not have to create a public file report because they do not have a public file.

Additionally, a small number of typographical errors have been corrected throughout the instructions and form.

Finally, the burden hours and burden costs published in the **Federal Register** on October 13, 2010 (75 FR 62816) have been reduced to reflect that only applicants for renewal of commercial broadcast stations are required to complete the new certification in Section II, Item 7 that their advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements contain nondiscrimination clauses.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

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## FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 10-244; DA 10-2259]

### Media and Wireless Telecommunications Bureaus Seek Comment on Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Media and Wireless Telecommunications Bureaus of the Federal Communications Commission seek comment on a recommendation of the Advisory Committee on Diversity for Communications in the Digital Age that the Commission consider a new preference program in its competitive bidding process to provide bidding credits to individuals and entities who have overcome substantial disadvantage.

**DATES:** Comments are due on or before February 7, 2011; reply comments are due on or before February 25, 2011.

**ADDRESSES:** You may submit comments, identified by GN Docket No. 10-244, by any of the following methods:

- *Federal Communications Commission's Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.
  - People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or telephone: 202-418-0530 or TTY: 202-418-0432.

**FOR FURTHER INFORMATION CONTACT:** Media Bureau, Industry Analysis Division: Amy Brett at (202) 418-2330, or Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: Sayuri Rajapakse at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the public notice, released December 2, 2010, in GN Docket No. 10-244, seeking comment on the Advisory Committee's Recommendation released on October 14, 2010. The Advisory Committee's Recommendation, which was released as an attachment to the public notice, is available at <http://www.fcc.gov/DiversityFAC/meeting101410.html>. The complete texts of the public notice and Recommendation are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The public notice may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 10-2259. The public notice is also available on the Internet at the Commission's Web site or by using the search function for GN Docket No. 10-244 on the ECFS Web page at <http://www.fcc.gov/cgb/ecfs/>.

On October 14, 2010, the Advisory Committee on Diversity for Communications in the Digital Age ("Advisory Committee") formally recommended that the Federal Communications Commission ("Commission") undertake a notice of proposed rulemaking to consider how the Commission could design, adopt, and implement an additional new preference program in its competitive bidding process. Under the proposed preference, persons or entities who have overcome substantial disadvantage would be eligible for a bidding credit. The Advisory Committee explains that the new preference "would expand the pool of designated entities to include those qualified applicants who have overcome substantial disadvantage," noting that the proposed program is

analogous in some respects to programs used by educational institutions in their admissions processes.

The Advisory Committee's Recommendation acknowledges that a number of issues concerning the design and implementation of its proposal would need to be refined and resolved by the Commission in a future rulemaking proceeding. The Media and Wireless Telecommunications Bureaus seek information that will assist the Commission in considering whether to launch a proceeding to further examine the components of the recommended preference. The Bureaus seek comment on the proposal and are especially interested in comments on the following questions. Interested parties need not address all the questions presented, but are encouraged to respond to those about which they have particular knowledge or information.

### I. Authority and Objectives

Sections 309(j)(3)(B) and (4)(D) of the Communications Act of 1934, as amended, direct the Commission respectively to seek to disseminate licenses among "a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women" and to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." The Commission has established a program to promote the involvement of statutorily-identified designated entities in the provision of spectrum-based services. Designated entities are defined in 47 CFR 1.2110(a) as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. The Commission's primary method of promoting the participation of designated entities in competitive bidding for wireless services has been to award bidding credits (percentage discounts on winning bid amounts) to small business applicants. In the context of broadcast services, the Commission adopted a tiered new entrant bidding credit to promote the objectives of section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership. That bidding credit may be awarded to broadcast auction applicants having no, or very few, other media interests. The Advisory Committee's Recommendation would establish an additional preference for persons or entities that have overcome substantial disadvantage.

1. Would the proposed preference comply with the Communications Act and other relevant statutes? Does section 309(j)(4)(D) authorize the Commission to establish the proposed preference for individuals who have overcome substantial disadvantage? If not, are there other statutory provisions that afford sufficient authorization? Would the Commission need additional legal authority to implement this new preference?

2. The Commission has previously found that rural telephone companies and minority- and women-owned businesses that qualify as small businesses are able to take advantage of the provisions we have adopted for small businesses. Similarly, in the broadcast context, the Commission established its new entrant bidding credit, having found that a preference for new entrants would be the most appropriate way to implement the statutory provisions regarding opportunities for small, minority- and women-owned businesses based on then-available information on opportunities for designated entities to participate in the provision of broadcast services. The Bureaus seek information to assess how individuals who have overcome substantial disadvantage have fared under the Commission's existing auction process and the designated entity benefits. Have persons who have overcome substantial disadvantages had difficulty in obtaining licenses under the existing process and designated entity programs? Do data exist that would demonstrate that individuals who have overcome substantial disadvantage are underrepresented in the Commission's auctions process? Is there evidence that persons who have overcome substantial disadvantage are more likely than others to utilize Commission licenses in the public interest, or do so to a greater extent? If no such data exist, what information could be developed to assess the need for the proposed bidding preference?

3. In establishing the existing small business bidding credit program, the Commission found that the preferences would allow designated entities to overcome barriers that have impeded these groups' participation in the telecommunications arena, including barriers related to access to capital. The Advisory Committee's Recommendation notes that the proposed preference would provide fair opportunity to those who have overcome substantial disadvantage and that it would result in the introduction of new entrants having diverse viewpoints. How would this proposed preference provide additional opportunities to individuals and entities

that differ from those available under our current bidding credit programs?

4. The Advisory Committee's Recommendation observes that the proposed overcoming disadvantage preference would be subject to a "rational basis" constitutional standard and that any Commission rulemaking "must support the conclusion that the overcoming disadvantage preference program will serve the public interest and is a rational way to further" the program's public interest objectives. What public or governmental interests would be served by establishing such a bidding preference? Commenters are specifically invited to provide information on what interests would be served under this program that are not being addressed with the Commission's existing bidding credit programs.

5. Are there additional constitutional issues raised by the Advisory Committee's Recommendation that the Commission should consider? If so, what are they? How might they be mitigated or eliminated?

### II. Eligibility for Preference

6. The Advisory Committee's Recommendation supplies a non-exhaustive list of disadvantages that may have had a substantial negative impact on an individual's "entry into or advancement in the professional world or other comparable context" that might justify the award of a preference, such as physical disabilities or psychological disorders that have rendered professional or business advancement substantially more difficult. Are there other categories of disadvantages that should qualify an individual for preferences beyond those listed in the Recommendation? Should any of the proposed disadvantages not be included? Should any of the disadvantages take precedence over others? Should there be a point system to weigh the relative merit of different disadvantages? Should the Commission develop and publish an exclusive list of qualifying disadvantages, or should determinations about whether a substantial disadvantage is qualifying be made on a case-by-case basis?

7. The Advisory Committee's Recommendation suggests that any disadvantage must be "substantial" in order to qualify an applicant for a preference. By what means should the Commission assess and/or quantify what experience would demonstrate "substantial" disadvantage?

8. What degree of success in overcoming a substantial disadvantage would an applicant have to demonstrate in order to evidence its eligibility for such a preference? How should

applicants be required to document their successes in “substantially” or at least “partially” overcoming disadvantages? Should any successes documented be limited to the applicant’s professional achievements, or should success in other contexts be considered by the Commission?

9. At what level of success, if any, should an applicant who has overcome substantial disadvantages become ineligible for the preference (e.g., by what measure of wealth or access to capital)? Should the Commission adopt different levels of preference based on a measure of wealth or access to capital? What criteria should be used to disqualify the applicant from eligibility for a bidding credit? If the Commission adopts an additional preference such as that recommended by the Advisory Committee, how should the Commission implement the statutory requirement to avoid unjust enrichment in the context of its bidding preference program?

### III. Administration

10. The Advisory Committee’s Recommendation notes that any determination of an individual’s or entity’s eligibility for an overcoming disadvantage preference would require an examination of all relevant evidence and would be based on an individualized evaluation. The individualized reviews that would occur under the proposed program are subjective in a manner that distinguishes them from existing designated entity programs, which are based on objective criteria such as financial data. By what means could applicants demonstrate that they qualify for the preference? For example, should a narrative explanation suffice? If not, what information or documentation would be necessary to substantiate a claim? Should an applicant be permitted to certify its eligibility for this preference under penalty of perjury in its short-form application when it seeks to participate in an auction, similar to the way in which applicants may certify eligibility for new entrant and small business bidding credits? If so, what guidance can the Commission provide to potential applicants so that they can make a good faith certification of eligibility? The Recommendation suggests that an overcoming disadvantage preference might be applied differently for different services (e.g., a preference might apply only for more valuable licenses in a broadcast auction). Would the Commission have to tailor the preference for specific services in a rulemaking, similar to its existing practice of establishing the

small business definitions on a service-by-service basis? The Advisory Committee recognized the importance of reducing subjectivity and achieving consistency among individualized determinations. What standards could the Commission implement to achieve those goals?

11. The Advisory Committee’s Recommendation suggests that a determination as to whether applicants have overcome disadvantages could be made within the existing short-form auction application review process. What would be the administrative burden for the Commission to conduct individualized review for such a preference within the relatively short time frames allotted under the existing auctions short-form application process? If the Commission were to allocate additional time in the pre-auction process for such reviews, would the possible burdens on auction applicants be outweighed by the public interest benefits of the proposed preference?

12. As an alternative, the Recommendation suggests that applicants could pre-qualify for preferences and thus avoid subsequent petitions to deny their licenses targeted at their qualification for the preference. Are there Administrative Procedure Act or other concerns for not allowing parties to file petitions challenging a proposed qualification? Is there a reason to treat this qualification differently than other qualifications that are subject to the petition to deny process? Does this raise issues with regard to the requirements of the Communications Act? If an applicant is found to be qualified prior to an auction but experiences a change of status during bidding, or after submitting a winning bid, should the individual remain eligible for the preference? Should a pre-qualification review strictly be limited to the overcoming of substantial disadvantage, or should it be a broader review of an applicant’s license qualifications, provided that the pre-auction process is extended?

13. The Advisory Committee’s Recommendation suggests three options for the management of qualification review: (1) Establishing a “special cadre” of Commission officials to evaluate applicant qualifications; (2) designing a modified Administrative Law Judge procedure for this purpose; (3) assigning the function to the Commission’s Bureau responsible for oversight of the service in question. What are the relative advantages and disadvantages of each option? What aspects of the current process for review of auction applicant eligibility suggest that these additional

options are necessary for the proposed preference program?

14. The Advisory Committee’s Recommendation asks whether a corporation should be able to receive the proposed preference based on the qualifications of its principal. What role should the principal play in a corporation or other business entity to confer eligibility for the preference on the entity? For instance, should the principal be required to have majority equity ownership and a management role?

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB, Federal Communications Commission.*

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## FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–17]

### Office of Inspector General; Delegation of Authorities

**AGENCY:** Office of Inspector General, Federal Housing Finance Agency.

**ACTION:** Notice of delegation of authorities.

**SUMMARY:** This notice delegates two authorities of the Inspector General, Office of Inspector General for the Federal Housing Finance Agency (FHFA–OIG), to the FHFA–OIG Principal Deputy Inspector General, the FHFA–OIG Deputy Inspector General for Audit, the FHFA–OIG Deputy Inspector General for Investigations & Evaluations, and the FHFA–OIG Chief Counsel. These authorities are: (1) The authority to issue subpoenas; and (2) the authority to request information under 5 U.S.C. 552a(b)(7).

**DATES:** *Effective Date:* December 27, 2010.