

you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov). If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pra>.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0441.

*Title:* Sections 90.621(b)(4) and (b)(5), Selection and Assignment of Frequencies.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and State, local or tribal government.

*Number of Respondents:* 1,000.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

*Total Annual Burden:* 1,500 hours.

*Total Annual Cost:* \$100,000.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The Commission is submitting this information collection to OMB as a revision in order to obtain the full three-year clearance from them.

Section 90.621 requires a fixed mileage separation of 113 km (70 miles) between co-channel 800 and 900 MHz systems. However, section 90.621(b)(4) provides that co-channel stations may be separated by less than 113 km (70 miles) by meeting certain transmitter ERP and antenna height criteria, as listed in the Commission's Short-Spacing Table. Previously, engineering showings were submitted with applications demonstrating that a certain addition or modification would not cause interference to other licensees, even though the stations would be less distance apart. Section 90.621(b)(5) states that the separation between co-channel systems may be less than the separations table if an applicant submits with its application letters of concurrence indicating that the applicant and each co-channel licensee

within the specified separation agree to accept any interference resulting from the reduced separation between their systems. Each letter from a co-channel licensee must certify that the system of the concurring licensee is constructed and fully operational. The applicant must also submit with its application a certificate of service indicating that all concurring co-channel licensees have been served with an actual copy of the application.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**[Report No. AUC–06–85–B (Auction No. 85); DA 06–874]**

**LPTV and TV Translator Digital Companion Channel Applications Filing Window for Auction No. 85; Auction Filing Window Rescheduled; Filing Requirements Regarding June 19–30, 2006 Window for LPTV and TV Translator Digital Companion Channel Applications**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces that the application filing window is rescheduled for the LPTV and TV Translator Digital Companion Channel Auction No. 85. This notice also provides the specific procedures for the filing of short-form applications and associated technical data for Auction No. 85.

**DATES:** FCC Short-Form Application Filing Window—June 19, 2006 through June 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** *Video Division, Media Bureau:* Hossein Hashemzadeh (technical) or Shaun Maher (legal) at (202) 418–1600. *Auction and Spectrum Access Division, Wireless Telecommunications Bureau:* For legal questions: Lynne Milne at (202) 418–0660; For general auction questions: Linda Sanderson at (717) 338–2888.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 85 Filing Window Public Notice* released on April 20, 2006. The complete text of the *Auction No. 85 Filing Window Public Notice*, including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m.

Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 85 Filing Window Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 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, such as, DA 06–874. The Auction No. 85 Filing Window Public Notice and related documents are also available on the Internet at the Commission's Web site at: <http://wireless.fcc.gov/auctions/85/>.

**I. General Information**

*A. Background*

1. The Federal Communications Commission (Commission) established rules and policies to facilitate the digital transition for low power television (LPTV), television (TV) translator and Class A TV stations. In its *LPTV DTV Report and Order*, 69 FR 69325, November 29, 2004, the Commission gave existing LPTV and TV translator service permittees and licensees the flexibility to choose one (and only one) of two methods to convert their existing analog stations to digital. Existing permittees and licensees in these services may either implement an on-channel digital conversion of their analog channel or they may seek a (second) digital companion channel that may be operated simultaneously with their analog channel. Permittees and licensees in these services are not guaranteed a digital companion channel and must identify a channel that can be operated consistent with the Commission's interference protection rules. At a date to be determined in the future, the Commission will require that the permittee or licensee terminate analog operation, return one of their two channels to the Commission, and operate their station only in digital mode. Permittees and licensees in these services may choose only one of these two methods for converting their existing analog stations to digital.

*B. Eligibility and Filing Restrictions*

2. This is a national filing window, meaning that applications for digital companion channels may be filed for any location in the United States and its

territories without geographic restrictions, subject to the Commission's technical rules, such as, 47 CFR 74.703 and 74.793. An application for a digital companion channel will not be accepted for filing if it fails to protect the authorized analog or digital facilities of a TV broadcast station, or the authorized analog facility of TV translator, LPTV, Class A television stations, or 700 MHz public safety or commercial wireless licensees. An application for a digital companion channel also must protect pending applications of TV translator, LPTV and Class A TV stations.

3. Only existing LPTV, TV translator and Class A TV station permittees and licensees will be permitted to file for digital companion channels during this window. Applicants for digital companion channels will be required to identify their associated analog station. Digital companion channel applications will be treated as minor change applications pursuant to 47 CFR 787(4)(b). The protected contour of the proposed digital station must overlap the protected contour of the associated analog station. While the digital companion channel application must propose to serve the community of license of its associated analog facility, there is no requirement that the digital companion facility provide any prescribed level of service to the analog station's community of license.

4. Permittees and licensees seeking digital operation must choose between an on-channel digital conversion of their analog station or operating a digital companion LPTV or TV translator station. Any permittee or licensee that has a license, construction permit, or pending application for on-channel digital conversion will not be eligible to submit an application for a digital companion channel for the same station, and any such companion digital channel application will be dismissed.

5. Permittees and licensees filing in this window are eligible to apply for only a single digital companion channel for each existing analog channel. The Bureaus remind permittees and licensees that they will be required at some point—to be determined in the future—to return one of their two companion channels to the Commission, either the analog or the digital channel. The Bureaus also remind Class A TV permittees and licensees that all digital companion channels will be licensed as LPTV channels on a secondary, non-interference basis.

#### C. Application Freeze

6. Due to the change in the schedule for the filing window, the previously-

announced freeze on the filing of LPTV, TV translator and Class A television analog and digital minor change, analog and digital displacement, and digital on-channel conversion applications, which started on April 3, 2006, will extend through June 30, 2006. Following the completion of the digital companion channel window on June 30, 2006, such minor change and displacement applications will once again be accepted. As an exception to this freeze, on-air operating stations demonstrating that they face imminent disruption of service may request special temporary authority where necessary to continue operations.

#### D. Mutually Exclusive Engineering Proposals

7. Following the close of the digital companion application filing window, the Media Bureau staff will evaluate the filings and determine which of the engineering proposals are mutually exclusive and must be resolved through competitive bidding in an auction. In the *LPTV DTV Report and Order*, the Commission stated that it would provide a limited period after the filing of short-form applications in the digital companion channel filing window for applicants to utilize engineering solutions and settlements to resolve conflicts among their applications. The precise period for this settlement opportunity will be specified in a later public notice.

#### E. Noncommercial Educational Facility Election

8. Section 309(j)(2)(C) of the statutory exemption from competitive bidding of applications for construction permits for noncommercial educational broadcast stations (NCE stations) applies to an engineering proposal for a digital companion channel filed by a LPTV, TV translator or Class A TV broadcast station that is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes. The Commission held previously that proposals for NCE stations may be submitted for non-reserved spectrum in a filing window, subject to being returned as unacceptable for filing if there is any mutually exclusive application for a commercial station. Accordingly, in the short-form application (FCC Form 175), applicants will have an opportunity to designate their status as an NCE station application. No applicant will be allowed to change its NCE election after the application filing deadline.

#### F. Rules and Disclaimers

##### i. Prohibition of Collusion

9. The Commission's part 1 and part 73 rules prohibit competing applicants from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii). Thus, pursuant to 47 CFR 1.2105(c) and 73.502(d), competing applicants must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect, bidding or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction, which will be announced in a future public notice. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

10. In Auction No. 85, the rule would apply to applicants filing applications in the digital companion channel window with engineering proposals that are mutually exclusive. Even if applicants submit only one engineering proposal each that is mutually exclusive, they may not discuss with each other their bids or bidding strategies relating to any engineering proposal submitted by either applicant during the digital companion channel window.

11. For purposes of this prohibition, section 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

12. Applicants in the digital companion channel window with engineering proposals that are mutually exclusive must not communicate indirectly about bids or bidding strategy. Such applicants 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 applicants that the authorized bidder is authorized to represent in the auction.

Also, if the authorized bidders are different individuals employed by the same organization a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications 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. A violation of the anti-collusion rule could occur in other contexts, such as, an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Bidders should use caution in their dealings with other parties, such as, members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

13. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with other applicants for engineering proposals that are mutually exclusive after the short-form filing deadline.

14. By electronically submitting its short-form application, each applicant certifies its compliance with sections 1.2105(c) and 73.5002. However, the Bureau cautions 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. The Commission intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

15. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws. Compliance with the disclosure requirements of the Commission's anti-collusion rules will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that may give rise to violations of the Federal antitrust laws the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

16. An applicant is required by 47 CFR 1.65 to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission 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. Applicants are therefore required by section 1.65 to make such notification to the Commission immediately upon discovery. In addition, section 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

17. Any report of a communication pursuant to sections 1.65 or 1.2105(c)(6) must be submitted by electronic mail to the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov). The electronic mail report must include a subject or caption

referring to Auction No. 85 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

18. Applicants that are winning bidders will be required by 47 CFR 1.2107(d) to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and agreements or other arrangements entered into relating to the competitive bidding process. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

19. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment C of the *Auction No. 85 Filing Window Public Notice* and these documents are available on the Commission's auction anti-collusion Web page at <http://wireless.fcc.gov/auctions/anticollusion>.

#### ii. Due Diligence

20. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities they are seeking in this application filing window. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

21. Applicants are strongly encouraged to conduct their own research prior to filing in the window in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the window. Participants in the digital companion channel window are strongly encouraged to continue such research throughout the auction. In addition, applicants should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific

construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

22. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the digital companion channel facilities they are seeking. Resolution of such matters could have an impact on the availability of their specified channel. Some pending applications, informal objections, petitions or other requests for Commission relief may not be resolved by the time of the window.

23. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to obtain their specified channel. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to file, and also to familiarize themselves with the environmental assessment obligations.

24. Applicants in this window should note that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Applicants should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities they are seeking in this window.

25. Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at: <http://www.fcc.gov/mb/>.

26. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

### *G. National Environmental Policy Act Requirements*

27. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a Federal action and, for each such facility, the permittee must comply with the Commission's NEPA rules, including 47 CFR 1.1305—1.1319. The Commission's NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities. The permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

## **II. Pre-Auction Procedures**

### *A. Auction Seminar—June 12, 2006*

28. On Monday, June 12, 2006, the Bureaus will sponsor a seminar for parties interested in participating in the filing window for Auction No. 85 at the Federal Communications Commission headquarters, located at 445 12th Street SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, service and auction rules, and specific information on the procedures for filing the short-form applications and associated technical data.

29. To register, complete the registration form provided as Attachment A of the *Auction No. 85 Filing Window Public Notice* and submit it by Thursday, June 8, 2006. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge. For individuals who are unable to attend, an Audio/Video of this seminar will be available via Webcast from the FCC's Auction 85 Web page.

### *B. General Filing Requirements*

30. Applicants for LPTV and TV Translator digital companion channels must file a short-form application and the engineering data from FCC Forms 346 or 301-CA. Such 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 only following the submission of long-form applications by winning bidders post-auction, or by

applicants identified as non-mutually exclusive, and by applicants resolving application mutual exclusivity during the established settlement period.

### *C. Short-Form Application (FCC Form 175)—Due Before 6 p.m. ET on June 30, 2006*

31. All applicants must submit a short-form application and associated technical data electronically via the FCC Auction System. This application must be submitted electronically. Applications may be filed any time beginning at 9 a.m. Eastern Time (ET) on June 19, 2006, but must be received at the Commission prior to 6 p.m. ET on June 30, 2006. Applicants are strongly encouraged to file early and 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 June 30, 2006. Late applications will not be accepted.

32. Applicants should carefully review 47 CFR 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Applicants must submit required information as entries in the data fields of the electronic FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the electronic FCC Form 175. Applicants must always click on the SUBMIT button on the Certify and Submit screen of the electronic form to successfully submit their FCC Forms 175 or modifications. Any form that is not submitted will not be viewed by the FCC.

### *D. Application Processing*

33. After the close of the window, the Commission will make mutual exclusivity determinations with regard to all timely and complete filings. Applications received during the filing window that are not mutually exclusive with any other applications submitted in the filing window will be identified by subsequent public notice.

34. The Bureaus will issue a public notice identifying mutually exclusive applications received during the window. That public notice also will specify a settlement period for resolving engineering proposal mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of universal settlements for eligible applicants. Mutually exclusive applicants may communicate with each other for the purpose of resolving conflicts only during the settlement period that will be specified in that forthcoming public notice.

35. Technical amendments submitted by applicants to resolve conflicts must be minor, as defined by the applicable rules of the service, and must not create any new mutual exclusivity or other application conflict. An applicant may only file a technical amendment during the settlement period specified by public notice.

36. Commercial applications that remain mutually exclusive after the settlement period closes will proceed to auction. The Bureaus will then issue a public notice identifying the auction date and seek comment on procedures for further processing of the remaining mutually exclusive short-form applications.

### III. Short-Form Application Requirements

37. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or construction permits. For Auction No. 85, if an applicant claims eligibility for a bidding credit, the information provided in its short-form application will be used in determining whether the applicant is eligible for the claimed bidding credit. Entities seeking construction permits available in Auction No. 85 must follow the procedures prescribed in Attachment B of the *Auction No. 85 Filing Window Public Notice*. Applicants bear full responsibility for submission of accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions specified in the *Auction No. 85 Filing Window Public Notice* and should consult the Commission's rules to ensure that all the information that is required under the Commission's rules is included within their short-form applications.

38. An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

39. Applicants also should note that submission of a short-form 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, its

certifications, and any 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.

#### A. Engineering Proposals

40. In addition to submitting the short-form application, applicants must submit technical data from FCC Forms 301-CA or 346. Applicants will be required to submit the following information: (1) A description of the engineering proposal and its service type; (2) The engineering proposal purpose (always Digital Companion Channel for this auction); (3) Information identifying the existing facility, including Facility ID and Call Sign; (4) General information about this facility, including antenna location coordinates and technical specifications; (5) The antenna type (nondirectional, directional off-the-shelf, or directional composite); manufacturer and model; electrical beam tilt; and, for a directional antenna, rotation.

41. For directional composite antenna types, the applicant must also specify relative field values for azimuths 0 to 350 degrees (in increments of 10 degrees). Up to five additional field values may be provided. Additional instructions on submitting the technical data portion of the short-form application are provided in the *Auction No. 85 Filing Window Public Notice*.

#### B. New Entrant Bidding Credit

42. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications shall be considered when determining an auction applicant's eligibility for the New Entrant Bidding Credit. The applicant's attributable interests shall be determined as of the short-form application filing deadline, June 30, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Any applicant 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, June 30, 2006. Prospective applicants are reminded, however, that events occurring after the short-form filing

deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

43. Under traditional broadcast attribution rules, such as, 47 CFR 74.3555 and its Note 2, those entities or individuals with an attributable interest in an applicant include: (1) All officers and directors of a corporate applicant; (2) Any owner of 5 percent or more of the voting stock of a corporate applicant; (3) All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) All members of a limited liability company, unless sufficiently insulated. Further, any applicant asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit.

44. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the applicant. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.

45. Applicants also are reminded that attributable interests include the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that auction applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

46. A medium of mass communications is defined in 47 CFR 73.5008(b). 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. Full service noncommercial educational stations, on both reserved and non-reserved channels, are included within the definition of media of mass communications. 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 winning bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.

### C. Application Requirements

47. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section.

#### i. Bidding Credits

48. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is 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 CFR 73.5008. 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 CFR 73.5008. 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 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has 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.

#### ii. Unjust Enrichment

49. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

### D. Consortia and Joint Bidding Arrangements

50. Applicants will be required to indicate on their applications whether they have 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. Applicants also 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 that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants with mutually exclusive engineering proposals after the application filing deadline.

51. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants with mutually exclusive engineering proposals provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because

they may convey pricing information and bidding strategies. Such subject areas included, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

### E. Ownership Disclosure Requirements

52. The Commission specified in the *Broadcast Competitive Bidding First Report and Order*, 63 FR 48615, September 11, 1998, that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply. Therefore, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short-form application are prescribed in sections 1.2105 and 1.2112. Affiliates and controlling interests are defined at 47 CFR 1.2110. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

### F. Provisions Regarding Former and Current Defaulters

53. Each applicant in Auction No. 85 must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, or any affiliate of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, as of the filing deadline for applications to participate in a specific auction, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

54. Former defaulters—i.e., applicants, including any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, that in the past have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 85, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

55. In contrast, an applicant is not eligible to participate in competitive bidding in Auction No. 85 if the applicant, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction.

56. Applicants are encouraged to review the Wireless Telecommunications Bureau's previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Further information is provided in the *Auction No. 85 Filing Window Public Notice*.

57. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. Prospective applicants in Auction No. 85 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Further, applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

58. The Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and

certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of any auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule may ultimately prevent the processing of long-form applications filed by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in this auction or its upfront payment obligation.

#### G. Other Information

59. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may identify themselves in filling out their short-form applications 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.

#### H. Minor Modifications to Short-Form Applications

60. Following the deadline for filing short-form applications on June 30, 2006, applicants in Auction No. 85 are permitted to make only minor changes to their applications. Pursuant to 47 CFR 1.2105, applicants are not permitted to make major modifications to their applications. Examples of major modifications include, but are not limited to, a major change to an applicant's engineering proposal, a change in control of the applicant, or an increase of a previously-claimed bidding credit. No applicant will be allowed to change its noncommercial educational (NCE) election after the application filing deadline on June 30, 2006.

61. Any application amendment and related statements of fact must be certified by: (1) The applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

62. An applicant must make permissible minor changes to its short-form application, as defined by § 1.2105(b), on-line. Applicants must click on the SUBMIT button in the FCC Auction System for the change to be submitted and considered by the Commission.

63. In the event that changes cannot be made immediately in the FCC Auction System for any reason, an applicant must submit a letter, briefly summarizing the changes and subsequently update their short-form applications in the FCC Auction System as soon as possible. Any letter describing changes to applicant's short-form application must be submitted by electronic mail to the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov).

#### I. Maintaining the Accuracy of Short-Form Application Information

64. Each applicant, pursuant to 47 CFR 1.65, must maintain the accuracy and completeness of information furnished in its pending application and notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit must be reported immediately. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's notification.

65. If an amendment reporting substantial changes is a major amendment as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application. Applicants must report section 1.65 modifications to their short-form application by electronic mail and submit a letter briefly summarizing the changes to the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov).

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

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## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-