

Short-Form Application Exhibits and Related Issues

DISCLAIMER

- Nothing herein is intended to supersede any provision of the Commission's rules or public notices. These slides should not be used as a substitute for a prospective applicant's review of the Commission's relevant orders, rules, and public notices. Prospective applicants must familiarize themselves thoroughly and remain current with the Commission's rules relating to FM Broadcast Service, rules relating to application and auction procedures, and the procedures, terms and conditions contained in the Auction No. 37 public notices.

Introduction

- Review of Exhibits for the short-form application (FCC Form 175)
- In particular, what to include in these attachments
- Additional helpful insights

Notes Regarding Exhibits

- Rules listing the required information for exhibits are contained in Sections 1.2105 and 1.2112 of the Commission's Rules
- General guidelines are contained in Attachment D of the June 10, 2004 *Auction No. 37 Procedures Public Notice* (DA 04-1699)
- No particular format for exhibits
- However exhibits need to be complete

Exhibit A - Applicant Identity and Ownership Information

- Under Section 1.2105(a)(2)(ii), each applicant is required to disclose all real parties in interest
- Includes officers and directors
- Each applicant applying for a New Entrant Bidding Credit must provide ownership information for itself and its controlling interests

Exhibit A (continued)

- *Corporation*: corporate name and address; and the name, title & citizenship of a responsible officer or director (Section 1.2112(a))
- *General Partnership*: name, address & citizenship of all partners and their interest (Section 1.2112(a)(3))
- *Limited Partnership*: name, address & citizenship of all partners whose interest is over 10 percent (Section 1.2112(a)(2))

Exhibit A (continued)

- *Limited Liability Company*: name, address & citizenship of all members whose interest is over ten percent (Section 1.2112(a)(4))
- *If None of the Above*: name, citizenship, title or other relation to the applicant; and address of a principal or other responsible person

Exhibit A (continued)

■ *Other Requirements:*

- List of all parties having a greater than ten percent interest in the applicant
- List all holdings in FCC-licensed entities and a description of each entities' relationship to the applicant

Exhibit B - Agreements with Other Parties and Joint Bidding Arrangements

- Collusion Rule: To prevent collusion, communications among the same mutually exclusive applicants are *generally* prohibited (Section 1.2105(c))
- Prohibition period is between the short-form deadline and the down payment deadline for permits won
- For more information, see the Collusion section of the Auctions website (<http://wireless.fcc.gov/auctions>)

Exhibit B — Agreements with Other Parties and Joint Bidding Arrangements

- Under Section 1.2105(a)(2)(viii), applicants must identify all parties that they have entered into agreements with that relate in any way to the construction permits being auctioned
- Includes any post-auction market structures

Exhibit B — Agreements with Other Parties and Joint Bidding Arrangements

- Applicants are also prohibited from discussing a competing applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies (amended in the *Part 1 Seventh Report and Order*, FCC 01-270 dated September 27, 2001)
- Those applicants that make or receive a prohibited communication must report the communication immediately to the Commission in writing.

Exhibit B — Agreements with Other Parties and Joint Bidding Arrangements

- Thus, an applicant's duty under Section 1.2105(c) is two-fold:
- Applicants may not engage in prohibited communications with competing applicants, *and*
- They are obligated to report to the Commission all communications prohibited under Section 1.2105(c)(1)
- An applicant's failure to report a prohibited communication may constitute a rule violation distinct from any other collusion violation

Exhibit D - Defaulters

- Statement is required indicating whether or not the applicant has ever been in default of a license or construction permit *or* any non-tax debt owed to any Federal agency
- Statement should cover the: (1) applicant; (2) its affiliates; (3) its controlling interests; and (4) the affiliates of its controlling interests
- Statement made under penalty of perjury; FCC treats statement as a certification

Other Required Exhibits

- Exhibit C: Status as a New Entrant Bidding Credit Recipient.
- Exhibit E: Applicants owned by minorities, women or rural telephone companies may attach an exhibit regarding this status.
- Exhibit F: Applicants wishing to submit additional information may do so in Exhibit F.
- *See Attachment D of the Auction No. 37 Procedures Public Notice for more information on these exhibits*

The Resubmission Period

- Filing window between the release of the *Status Public Notice* and the upfront payment deadline
- Any short-form application that has been classified by the Commission as “incomplete” must be cured during this filing window
- The resubmission period — referenced in Section 1.2105(b) — is the last chance for applicants to cure any deficiencies in their short-form applications.

Resubmission Period (cont'd)

- If an applicant does not cure during this period, it risks being classified as a *non-qualified bidder*, whereby the applicant would be precluded from participating in the auction
- If applicants have questions concerning their resubmissions, it is recommended that they call the Commission
- Applicants can view the applications of competing applicants at the start of the resubmission period

Some Last Key Points . . .

- Do not list any taxpayer identification numbers (TINs) on the FCC Form 175
- Carefully read the certifications on the FCC Form 175
- Submission of the FCC Form 175 is a representation that its contents are true and correct
- Submission of a false certification may result in penalties