



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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PERMANENT AND INTERIM APPLICATION PROCEDURES ANNOUNCED
FOR AUTHORITY TO OPERATE STATIONS FORMERLY LICENSED TO ENTITIES
CONTROLLED BY MICHAEL RICE

This *Public Notice* contains information relevant to Auction No. 32 and Auction No. 37. The Mass Media Bureau (“MMB”) and the Wireless Telecommunications Bureau (“WTB”) (collectively, the “Bureaus”) hereby give notice of filing windows for applications for permanent and/or interim authority for the following radio station assignments:

<u>FORMER CALL SIGN</u>	<u>COMMUNITY OF LICENSE</u>	<u>FREQUENCY</u>
WBOW(AM)	Terre Haute, IN	640 KHz
WBUZ(AM)	Terre Haute, IN	1230 KHz
WZZQ(FM)	Terre Haute, IN	Ch. 298B (107.5 MHz)
KFMZ(FM)	Columbia, MO	Ch. 252C2 (98.3MHz)
KROW(FM)	Huntsville, MO (Construction Permit)	Ch. 278C2 (103.5 MHz)
KBMX(FM)	Eldon, MO	Ch. 270A ¹ (101.9 MHz)
KFXE-FM	Cuba, MO (Construction Permit)	Ch. 271A (102.1 MHz)

The filing window for the listed AM assignments will open on **July 16, 2001** and close on **July 24, 2001**. The filing window for the listed FM assignments will be announced by a subsequent *Public Notice* in conjunction with Auction No. 37, as described below.

¹ Lake Broadcasting, Inc. (“Lake”), former licensee of this facility, sought *via* a counterproposal to upgrade the Eldon allotment from Class A to Class C1 status. The staff denied that counterproposal in the *Report and Order* in MM Docket No. 89-120, 7 FCC Rcd 1449 (Allocations Br. 1992). The staff dismissed as moot Lake’s petition for reconsideration in a *Memorandum Opinion and Order* in MM Docket No. 89-120, DA 01-930 (Allocations Br., released April 13, 2001). On May 14, 2001, Lake filed a petition for reconsideration of that action. The staff also dismissed as moot related petitions for reconsideration filed by Lake in MM Docket No. 90-195, DA 01-1016 (Allocations Br., released April 20, 2001); MM Docket No. 91-352, DA 01-1017 (Allocations Br., released April 20, 2001); and MM Docket No. 92-214, DA-1018 (Allocations Br., released April 20, 2001). On May 15, 2001, Lake filed applications for review of those actions.

On March 19, 2001, the Supreme Court of the United States denied *certiorari* in the case of *Contemporary Media, Inc. v. FCC*, ___ U.S. ___, 121 S.Ct. 1355 (2001). This action rendered final the opinion of the United States Court of Appeals for the District of Columbia Circuit affirming the Commission's decision² revoking seven authorizations formerly licensed to entities affiliated with Michael Rice. *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000). Accordingly, judicial review has now been completed, and the former licensees must now terminate operations by 12:01 a.m. on July 13, 2001. 13 FCC Rcd at 14,461.

As explained in more detail below, in order to preserve broadcast service to the affected communities, the former licensees will be granted special temporary authorization to continue such operation for a period not to exceed 90 days from the date of this *Public Notice* or until 14 days after the interim operator or permanent successor licensee has given notice that it is ready to commence operations, whichever occurs sooner. Accordingly, minor change applications must continue to protect these formerly authorized facilities. The AM facilities in Terre Haute were authorized under technical standards less stringent than current rule requirements. *See Report and Order in the Matter of Review of Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993) ("*AM Improvement Orders*"). In order to preserve broadcast service to the affected communities, the Bureaus will accept interim proposals and new station proposals for permanent authority for these Terre Haute AM radio station assignments that specify current operating parameters. *See, e.g., Chameleon Radio Corporation*, FCC 00-397 (released December 1, 2000) (Commission directs staff to waive pertinent technical standards to permit applicants to replicate revoked station's existing service area). Modified new station proposals must satisfy the technical requirements set forth in the *AM Improvement Orders*. *See, e.g., 6 FCC Rcd at 6294-97*. Competing AM major modification proposals must comply with current AM technical rules.

Interested parties may apply for interim and/or permanent authorizations as outlined below. Interim proposals for fewer than all of the vacated frequencies will be considered only if no interim applicant proposes operation on all of the AM and FM radio station assignments.

Applicants for interim authorization. Applications for interim authority for the five formerly licensed facilities must be filed in paper form with the Office of the Secretary by 5:30 p.m. Eastern Time on **July 24, 2001**.³ Such applications shall contain Section 1 and the Tech Box of Section III of FCC Form 301, May 1999 version.⁴ Additionally, each applicant for interim authority must submit a narrative statement detailing (1) the radio station assignment(s) sought; (2) a plan and timetable for promptly initiating interim operations on such radio station assignments; and (3) arrangements, if any, it has made with the former licensee for lease or purchase of existing technical facilities.

Upon receipt of the interim applications, the Mass Media Bureau staff will promptly make a determination regarding potential mutual exclusivity for each of the subject radio station assignments and may request additional information regarding applicants' legal and technical qualifications. To the extent

² *Contemporary Media, Inc.*, 13 FCC Rcd 14,437 (1998).

³ A courtesy copy of any interim proposal should also be sent to Elizabeth Robinson, Federal Communications Commission, Mass Media Bureau, Audio Services Division, Room 2-B450, 445 12th Street, N.W., Washington, D.C. 20554.

⁴ AM applicants should submit the Tech Box in Section III-A of FCC Form 301. FM applicants should submit the Tech Box in Section III-B of FCC Form 301.

that there remains more than one proposal for interim operation for any assignment, the Bureau will contact those applicants shortly after the determination of potential mutual exclusivity and provide a five-day period to reach voluntary agreements for joint interim operations and to file requests for approval of these agreements.⁵ Should no agreement be reached, the Bureau may consider imposing a share-time arrangement among the applicants or not selecting interim operators. In either event, the Bureau staff will evaluate the interim proposals and render a determination in each case as quickly as possible.

Interim operators will be permitted to run the stations on a for-profit basis. In past cases, an interim operator has generally been considered a “caretaker” of the frequency until a permanent operator was selected. Interim operators also have been required to distribute all net profits to charity. *See, e.g., Angeles Broadcasting Network*, 96 FCC 2d 5, 7 (Rev. Bd. 1984). Due to the short duration of interim operation expected here, and the size of the markets in which these stations are located, the Bureaus believe that permitting an interim operator to profit from its temporary operation will generate more interest in such operation, and thus facilitate continuity of service to these communities.

Applicants for permanent authorization. Selection among mutually exclusive applicants for permanent operation of these facilities will be *via* the Commission’s broadcast station competitive bidding rules. *See* 47 C.F.R. § 73.5000 *et seq.*

AM applicants. The filing window for AM Auction No. 32 has been completed, and the staff has made determinations of mutual exclusivity.⁶ Accordingly, by this *Public Notice* the Bureaus announce a supplemental filing window for AM Auction No. 32. The Commission will accept only applications in conflict with the two formerly licensed AM stations listed above or in conflict with such applications. **Those wishing to participate in the auction for these AM frequencies must file both an FCC Form 175, and Section I and the Tech Box of Section III-A of FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, (May 1999 version) between 9:00 a.m Eastern Time on July 16 and 5:30 p.m. Eastern Time on July 24, 2001.** *See* Attachments A, B, and C for more information regarding the completion of FCC Form 175, including information on bidding credits and designated entities. No fees are required at this time. To the extent mutually exclusive applications are filed, the Bureaus anticipate that they will be consolidated with other pending mutually exclusive AM groups and included in Auction No. 32. The Bureaus will establish an Auction No. 32 auction date and auction procedures by subsequent *Public Notice*. Consistent with procedures established for Auction No. 32, the staff will undertake comparative Section 307(b) analyses as necessary and, if major modification applications are filed, permit settlements with respect to applications received pursuant to this *Public Notice*.

⁵ The anti-collusion provisions of 47 C.F.R. § 1.2105(c) apply to auction applicants after the deadline for short-form auction applications (FCC Form 175). While the anti-collusion rule does not prohibit non-auction-related business negotiations among auction applicants, applicants that file both interim and permanent applications are reminded that certain discussions or exchanges could broach on impermissible subject matters if they convey information on bids or bidding strategies. *See, e.g., Public Notice*, “Closed Broadcast Auction: Notice and Filing Requirements for Auction of AM, FM, TV, LPTV, FM, and TV Translator Construction Permits Scheduled for September 28, 1999,” 14 FCC Rcd 10,632, 10,640 (M.M. Bur./W.T. Bur., released July 9, 1999).

⁶ *See Public Notices*, “AM Auction Filing Window and Application Freeze,” DA 99-2585 (M.M. Bur./W.T. Bur., released November 19, 1999); “AM Auction No. 32 Mutually Exclusive Applicants Subject to Auction,” DA 00-2416 (M.M. Bur./W.T. Bur., released October 27, 2000).

In order to accommodate a WTB infrastructure maintenance window, the Bureaus hereby waive the electronic filing requirement⁷ and will require AM applicants to manually file both Form 175 applications and the Form 301 Section I and Tech Box of Section III-A submissions. For more information regarding the manual filing of Form 175 applications and Form 301 Section I and the Tech Box of Section III-A submissions, *see* Attachments A and B. Pursuant to the Commission's broadcast competitive bidding rules, only a winning bidder will be required to submit a complete long-form application, FCC Form 301, following the close of the auction. *See* 47 C.F.R. § 73.5005.

FM applicants. FM Auction No. 37 is scheduled to begin on December 5, 2001. The Bureaus have sought comment and established competitive bidding procedures for Auction No. 37.⁸ The Bureaus will open a window for the filing of FCC Form 175 applications for Auction No. 37 on September 24, 2001, and all such applications must be filed by October 5, 2001.⁹ By this *Public Notice*, the Bureaus announce that they will expand FM Auction No. 37 to include applications for the five FM allotments listed above. Additionally, the Bureaus will release shortly a *Public Notice* seeking comment on minimum opening bids and other procedural issues relating to the five subject FM allotments, thus placing them in the same procedural posture as the extant FM allotments subject to Auction No. 37.

Operation of the stations pending selection of an interim operator or successor licensee. The Mass Media Bureau staff will expeditiously evaluate both interim and permanent authority applications in order to authorize replacement service as quickly as possible. Nevertheless, in order to help preserve the current level of service to the listed communities, the disqualified former licensees ARE HEREBY GRANTED special temporary authorization to continue their operations for a period not to exceed 90 days from the date of this *Public Notice*¹⁰ or until 14 days after the interim operators or permanent successor licensees have given notice that they are ready to commence operations, whichever occurs sooner.¹¹ Such operation also will be subject to the following condition: each former licensee shall, commencing on July 13, 2001, compute its net profits by the accounting methods used for Federal income tax purposes and shall pay over to recognized and unaffiliated local charities those net profits. Distributions shall be made at intervals not exceeding every 30 days; the first such disbursement shall be made within ten business days of the close of the first 30-day accounting period. Each former licensee shall also, at 30-day intervals, file with the Commission an accounting of its revenues, expenses, and net profits, if any, and document the distribution of such net profits, and shall continue to submit accounts thereafter at intervals of not more than every 30 days during the entire term of the temporary operation. The accounting should be submitted to the Chief, Mass Media Bureau, and the first accounting shall be submitted on August 13, 2001. *See, e.g., RKO General (WNAC-TV, Boston, Massachusetts)*, 50 RR 2d 1566 (1982), *citing Impoundment of Profits of Station WLBT(TV), Jackson, Mississippi*, 39 FCC 2d 462 (1973).

⁷ *See* 47 C.F.R. § 1.2105(a).

⁸ *See Public Notices*, "Auction Notice and Filing Requirements for FM Broadcast Construction Permits," DA 01-119 (M.M. Bur./W.T. Bur., released January 19, 2001); "Auction For FM Broadcast Construction Permits Postponed Until December 5, 2001," (M.M. Bur./W.T. Bur., released March 7, 2001).

⁹ *Public Notice*, "Auction For FM Broadcast Construction Permits Postponed Until December 5, 2001," *supra*, at p. 1.

¹⁰ *See* 47 U.S.C. § 309(f); 47 C.F.R. § 73.1635.

¹¹ *See* discussion below on the Motion for Extension of Operating Authority filed on June 1, 2001.

Petition for Equitable Relief/Motion for Extension of Operating Authority. On June 1, 2001, Rice and the licensee entities under his control filed a “Petition for Equitable Relief” in which they sought, *inter alia*, to permit the former licensees to “retain” their licenses or, alternatively, that the Commission permit the assignment of the stations to qualified buyers.¹² They also filed a “Motion for Extension of Operating Authority” seeking to extend their authority to operate the radio stations pending consideration of the Petition for Equitable Relief.

The Petition for Equitable Relief is an untimely and collateral challenge to a proceeding that has been final since April 13, 2001, the deadline for seeking rehearing of the Supreme Court’s denial of *certiorari*. Accordingly, the Petition for Equitable Relief hereby IS DISMISSED. *See, e.g., Association of Public Safety Communications Officials, Inc., Emergency Petition or Clarification*, 14 FCC Rcd 4339, 4344 (W.T. Bur. 1999) (dismissing pleading as “an impermissible collateral attack on final Commission decisions”). Mr. Rice has no radio stations to retain or assign.¹³ Additionally, given our actions here granting to the former licensees special temporary authorization to continue station operations and dismissing the Petition for Equitable Relief, the Motion for Extension of Operating Authority also IS DISMISSED.

For additional information, contact Lisa Scanlan or Michael Wagner at the Audio Services Division, Mass Media Bureau, at (202) 418-2700.

List of Attachments:

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|---------------|---|
| 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 |

¹² Reichel Broadcasting Corporation filed comments in support of the Petition for Equitable Relief on June 11, 2001, and Central Missouri Media, L.L.C. filed comments in support of the pleading on June 12, 2001.

¹³ *See, e.g., West Coast Media, Inc.*, 56 RR 2d 483, 484 (1983) (“[A]s a matter of law, [the licensee] no longer has a license to transfer” when Commission denial of license renewal application was affirmed by the Court of Appeals and the Supreme Court denied *certiorari*).

ATTACHMENT A

PRE-AUCTION PROCEDURES

A. Short-Form Application (FCC Form 175) Filing Procedures for AM Applicants -- Due July 24, 2001, 5:30 p.m. ET.

All applicants must submit an FCC Form 175 application no later than 5:30 p.m. ET on July 24, 2001. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175.

(1) Manual Filing

All FCC Form 175 applications for this filing window **must be filed manually**. Applicants must use the October 2000 version of FCC Form 175 and FCC Form 175 Schedule B. Earlier versions of the FCC Form 175 will not be accepted for filing. AM applicants must also file Section I and the Tech Box from Section III-A of FCC form 301 (May 1999 version). A copy of the forms, along with instructions, may be downloaded from the Commission's World Wide Web site at <http://www.fcc.gov/formpage.html>. Additional copies of the FCC Form 175 or FCC Form 301 can be obtained by calling the Commission's Forms Distribution Center at (800) 418-3676 (outside Washington, D.C.) or (202) 418-3676 (in the Washington area). If applicants have any questions concerning availability of the FCC Form 175, they should call the FCC Records Management Branch at (202) 418-0210.

All applications must be submitted by hand delivery (including private "overnight" courier) or by U.S. mail (certified mail with return receipt recommended), addressed to:

FCC Form 175 Filing Auction No. 32
Federal Communications Commission
Wireless Telecommunications Bureau
Auctions and Industry Analysis Division
1270 Fairfield Road
Gettysburg, PA 17325-7245

NOTE: Applications delivered to any other location or applications sent via facsimile will not be accepted.

(2) Applications for the AM facilities and AM major modification applications filed during the window filing period

As discussed in the *Broadcast Auction First Report and Order*,¹⁴ 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, FCC Form 301, by winning bidders post-auction, or by applicants identified as non-mutually exclusive.

¹⁴ *First Report and Order, Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15,920 (1998).

Applicants for new AM stations and AM major modifications 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 (along with the FCC Form 175) at the Gettysburg office of the Wireless Telecommunications Bureau's Auctions and Industry Analysis Branch at the address listed in (1) above by 5:30 p.m. Eastern Time on July 24, 2001. Late applications will not be accepted. No application filing fee is required. Applications for new AM stations or for AM major modifications within the AM Expanded Band may not be filed during this auction filing window. **Each Form 301 application submitted during the filing window for an AM facility must include a copy of the related FCC Form 175.** A courtesy copy of any Form 175/Form 301 application package filed during the window should also be sent to Elizabeth Robinson, Federal Communications Commission, Mass Media Bureau, Audio Services Division, Room 2-B450, 445 12th Street, S.W., Washington, D.C. 20554.

(3) 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 listed in Attachment B of this Public Notice. Failure to sign the FCC Form 175 will result in dismissal of the application and loss of the ability to participate in the auction. **Only original signatures will be accepted for filed applications.**

B. 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. 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.¹⁵ 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.¹⁶ 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.¹⁷

¹⁵ 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 11,973, 11,977 ¶ 11 (1998) ("*Nevada Wireless*").

¹⁶ See *Nevada Wireless*, *supra* note 1 at 11,978, ¶ 13.

¹⁷ See 47 C.F.R. § 1.2105(c).

By 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.

C. Application Processing and Minor Corrections

After the deadline for filing has passed, and assuming more than one FCC Form 175 is received, the Commission will subsequently issue a public notice identifying: (1) those applications which are mutually exclusive (including FCC reference numbers); (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. If only one FCC Form 175 is received for a specific assignment during the window, that assignment will be removed from the auction inventory. That applicant will then be required to submit FCC Form 301.

As described more fully in the Commission's Rules, after the July 24, 2001 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 initial filing window.

(1) Review of 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. The forms will be available for review at the Public Reference Center, Office of Media Relations, 445 Twelfth Street, SW, Suite CY-A257, Washington, D.C. 20554. Applicants may also obtain copies of the forms from the FCC Copy Contractor, International Transcription Services, Inc., at the same address, Room CY-B400, (202) 314-3070.

ATTACHMENT B

GUIDELINES FOR COMPLETION OF FCC FORM 175 AND EXHIBITS FOR AM APPLICANTS

A. FCC Form 175

Because of the significance of the FCC Form 175 application to the auction, applicants should especially note the following:

Applicants must use the October 2000 version of the FCC Form 175 and FCC Form 175 Schedule B. Earlier versions of the FCC Form 175 will not be accepted. Copies of the FCC Form 175 can be obtained by calling the Commission's Forms Distribution Center at (800) 418-3676 (outside Washington, D.C.) or (202) 418-3676 (in the Washington area). Copies can also be downloaded from the Commission's World Wide Web site at <http://www.fcc.gov/formpage.html>. If applicants have any questions concerning availability of the FCC Form 175, they should call the FCC Records Management Branch at (202) 418-0210.

Filing Address: Applications must be submitted by hand delivery (including private "overnight" courier) or by U.S. mail (certified mail with return receipt recommended), addressed to:

FCC Form 175 Filing Auction No. 32
Federal Communications Commission
Wireless Telecommunications Bureau
Auctions and Industry Analysis Division
1270 Fairfield Road
Gettysburg, PA 17325-7245

NOTE: Applications delivered to any other location will not be accepted.

Applicant: Name given is used as your bidder name in the auction.

Applicant Address: Applicants must provide 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 FCC 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 July 24, 2001.

Licenses/Construction Permits: Applicants should list all assignments on which they want to be eligible to bid in the auction. Broadcast applicants should use FCC Form 175 Schedule B to list assignments. Be advised that there is no opportunity to change this list once the short-form filing deadline passes on July 24, 2001. It is critically important that you confirm the assignments that you have selected because the FCC auction system will not accept bids on assignments for which an applicant has not applied on its FCC Form 175. (Please note that applicants for the AM facilities 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.)

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/permit 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: Failure to sign the FCC Form 175 will result in dismissal of the application and loss of the ability to participate in the auction. **Only original signatures will be accepted.**

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 Commission'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 construction permits 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 construction permits on which 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 construction permits won, when such communication concerns 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 -- Defaulters and Former Defaulters Information: Each applicant must attach an Exhibit certifying that it is not in default on any Commission construction permit or license and that it is not delinquent on any non-tax debt owed to a Federal agency. Each applicant must also attach a statement made under penalty of perjury indicting whether or not the applicant has ever been in default on any Commission construction permit or license, or has ever been delinquent on any non-tax debt owed to any Federal agency.

Exhibit E -- Information Requested of Designated Entities: Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c)(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 F – Miscellaneous: Applicants wishing to submit additional information may do so in Exhibit F.

NOTE: Applicants should not list their TIN numbers on any Exhibits to their FCC Form 175s.

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.

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).

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).

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.¹⁸ 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.¹⁹ Bidders should note that the mass media attribution rules were recently revised.²⁰

Bidders are also reminded that, by *Memorandum Opinion and Order* released August 5, 1999,²¹ the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it

¹⁸ See 47 C.F.R. § 73.3555 Note 2.

¹⁹ See *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992).

²⁰ See *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, 14 FCC Rcd 12559 (1999), *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 1097 (2001) (prior history omitted).

²¹ *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, 14 FCC Rcd 12541 (1999) (“*Bidding Credit Memorandum Opinion and Order*”).

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.²²

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.²³ 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.²⁴ 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.²⁵

Bidders are reminded of their continuing Section 1.65 responsibility to maintain the accuracy and completeness of information contained in their short-form applications; if changes in ownership or in the media interests of the bidder's principals would result in the diminishment or loss of a claimed New Entrant Bidding Credit at any time after the short-form filing deadline, such information must be clearly stated in the bidder's amendment material.²⁶

(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.²⁷ In addition, in those cases 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.

²² See 47 C.F. R. § 73.5008.

²³ 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.

²⁴ *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, *Memorandum Opinion and Order*, 14 FCC Rcd 8724, 8764 (1999).

²⁵ 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.

²⁶ See *Liberty Productions, a Limited Partnership*, FCC 01-129 (released May 25, 2001).

²⁷ See 47 C.F.R. § 1.2105.

B. Bidding Credits

Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 C.F.R. § 73.5007, 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.²⁸

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.²⁹ The ownership disclosure standards for the short form are set forth in Section 1.2112 of the Commission's rules. Applicants should note that Section 1.2112 requires the reporting of interests of ten percent or greater of any FCC-regulated entity or applicant for an FCC license.

Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c)(3), may attach an exhibit (Exhibit E) 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

²⁸ See 47 C.F.R. § 73.5007(c).

²⁹ 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.

auctions. Applicants wishing to submit additional information may do so in Exhibit F -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.