



# PUBLIC NOTICE

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## AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze

### Notice and Filing Requirements Regarding January 26-30, 2004 Window for Certain AM Construction Permit Applications; Notice Regarding Freeze on the Acceptance of AM Minor Change Construction Permit Applications from January 12 to January 30, 2004.

#### Report No. AUC-03-84-A (Auction No. 84)

The Media Bureau (“MB”) and the Wireless Telecommunications Bureau (“WTB”) announce an auction filing window for certain AM station construction permit applications.<sup>1</sup> The filing window will open on January 26, 2004, and close on January 30, 2004. In connection with this window, MB also announces that it will not accept AM minor change construction permit applications between January 12, 2004 and January 30, 2004.

**Scope:** The window is available for proposals for new AM stations and major modifications to authorized AM facilities, as defined in Section 73.3571(a)(1).<sup>2</sup> Proposals submitted in the filing window must protect all minor change applications filed before January 12, 2004. The window will not

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<sup>1</sup> See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, 13 FCC Rcd 15920, 15925-28 (1998) (“*Broadcast First Report and Order*”), granted in part and denied in part, 14 FCC Rcd 8724 (1999), modified, 14 FCC Rcd 14521 (1999) (determining it appropriate to subject mutually exclusive major modification applications to competitive bidding).

<sup>2</sup> See 47 C.F.R. § 73.3571(a)(1) for AM broadcast station major change definition. See also *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules, First Report and Order*, 14 FCC Rcd 5272 (1999) (Commission reclassified certain AM technical changes, such as modifications in power, antenna height or antenna location, hours of authorized operation, or the addition of nighttime service, as minor); *Broadcast First Report and Order*, 13 FCC Rcd at 15972-74 (granting Bureaus authority to open filing windows and schedule auctions in a flexible manner to accommodate the circumstances unique to each service and best promote the efficiency of the broadcast application and auction process). See also *Rainbow Broadcasting Company*, 949 F.2d 405 (1991) (agencies accorded wide latitude and flexibility in implementing practices and procedures).

be available for frequencies in the AM expanded band or for major changes in existing AM expanded band stations.<sup>3</sup>

**Application Freeze.** AM minor modification applications are governed by first come/first served processing procedures and generally may be filed at any time.<sup>4</sup> However, to avoid the possibility of mutual exclusivity with new and major change applications submitted during this auction filing window, MB will institute a temporary freeze on the acceptance of AM minor change applications at 12:01 a.m. Eastern Time (“ET”), January 12, 2004.<sup>5</sup> The freeze will remain in effect until the close of the window. AM minor change applications filed during this freeze will be dismissed.

**Participation.** All applicants for new or major modification of authorized facilities **must**:

- **File electronically FCC Form 301**, Application for Construction Permit for Commercial Broadcast Station, between 12:01 a.m. ET, January 26, 2004 and 6:00 p.m. ET, January 30, 2004. Only Section I and the Tech Box of Section III-A must be completed at this time.<sup>6</sup> See Attachment A for more information regarding the completion of Form 301. See Attachment D regarding the electronic filing of Form 301. No fee is required.

Note: A separate Form 301 must be submitted for each proposal.

- **File electronically a short-form application (FCC Form 175)** by 6:00 p.m. ET January 30, 2004. See Attachments A and B for more information regarding the completion of Form 175, including information on the broadcast new entrant bidding credit. See Attachment C regarding the electronic filing of Form 175. Applicants must specify the CDBS-assigned file number(s) of all window-filed Form 301 application(s) on Form 175, at Exhibit F (“Miscellaneous Information”).<sup>7</sup>

Note: Applicants must submit only one Form 175 regardless of the number of Form 301s filed.

- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

**An applicant’s failure to reference the Form 301 window-filed application file number(s) on its Form 175 will result in the dismissal of that Form 301 application. No consideration will be given any proposal for which the required engineering information is not on file by the close of the window.** No application filing fee is required at this time.

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<sup>3</sup> See *Public Notice*, “Freeze Announced on the Filing of AM Expanded Band Major Change Applications,” 17 FCC Rcd 1806 (MMB 2002) (freeze effective February 1, 2002). AM expanded band stations operate on one of the ten channels in the 1605-1705 kHz band. See 47 C.F.R. § 73.30.

<sup>4</sup> 47 C.F.R. § 73.3571(f).

<sup>5</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15989.

<sup>6</sup> 47 C.F.R. § 73.3571(h)(1)(ii).

<sup>7</sup> *Id.*

**Application Processing.** 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.<sup>8</sup> Applicants identified as non-mutually exclusive will be instructed to submit the complete FCC Form 301 and filing fee, if required, within 30 days.<sup>9</sup> No amendments to the AM new or major modification filing window Form 301 application, technical or otherwise, will be accepted between the close of the application filing window, January 30, 2004, and the public notice listing the non-mutually exclusive AM applications. Complete FCC Form 301 non-mutually exclusive applications will be processed and MB will issue CDBS-generated public notices listing those applications determined acceptable for filing. Petitions to deny must be filed within 10 days of the pertinent public notice.<sup>10</sup>

MB and WTB will issue a public notice identifying mutually exclusive applications received during the window.<sup>11</sup> This public notice also will specify a settlement period for resolving application mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of universal settlements for eligible applicants.<sup>12</sup> Technical amendments submitted by applicants to resolve conflicts must be minor, as defined by the applicable rules of the AM service, and must not create any new mutual exclusivity or other application conflict. No amendments to the AM new or major change filing window Form 301 application, technical or otherwise, will be accepted between the close of the application filing window and the public notice listing the mutually exclusive applications. An applicant may only file a technical amendment between the release of the public notice listing the mutually exclusive applications and the close of the specified settlement period.

As discussed further in Attachment A, applicants will not be permitted to make major modifications to the FCC Form 175.<sup>13</sup>

The collusion prohibition set forth in 47 C.F.R. § 1.2105(c) applies to the AM new and major modification auction. 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. As further detailed in Attachment A to this public notice, this prohibition becomes effective at the Form 175 filing deadline. Mutually exclusive AM

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<sup>8</sup> 47 C.F.R. § 73.5002(a).

<sup>9</sup> *See id.* § 73.3571(h)(3).

<sup>10</sup> *See id.* § 73.5006(b).

<sup>11</sup> *See id.* § 73.3571(h)(2). In determining mutual exclusivity among the AM applications, the staff will apply 47 C.F.R. §§ 73.37, 73.182, 73.183(b)(1). *See also Nelson Enterprises, Inc.*, 18 FCC Rcd 3414 (2003) (application of AM interference standards to establish mutual exclusivity between window-filed applications); *Review of the 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).

<sup>12</sup> *See id.* § 73.5002(c)(1)&(d)(1).

<sup>13</sup> *See id.* § 1.2105(b).

major modification applicants may communicate with each other for the purpose of resolving conflicts only during the settlement period that will be specified in a forthcoming public notice.<sup>14</sup>

For additional information, contact Edward De La Hunt, Ann Gallagher or Lisa Scanlan at the Audio Division, 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: | Electronic Filing and Review of the FCC Form 175       |
| Attachment D: | Electronic Filing of the FCC Form 301                  |

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<sup>14</sup> *See id.* § 73.5002(d).