

**ATTACHMENT A**  
**PRE-AUCTION PROCEDURES**

**General Filing Requirements**

Applicants for FM translator stations must file an FCC Form 175 short-form application and the engineering data contained in the FCC Form 349. Such engineering information is required to make mutual exclusivity determinations. MB will not make any determination as to the acceptability or grantability of an applicant's technical proposal. A comprehensive review of applicants' technical proposals will be undertaken by the staff following the submission of long-form applications by winning bidders post-auction, by applicants identified as non-mutually exclusive, and by applicants resolving application mutual exclusivity during the established settlement period.

**A. FCC Form 349 Filing Procedures – Due March 14, 2003 6:00 P.M. ET**

**(1) New proposals for new FM translator stations and FM translator major modifications.**

Applicants for new FM translator stations and FM translator major modifications that do not have an FCC Form 349 currently pending before the Commission must electronically file an FCC Form 349 between 12:01 a.m. ET March 8, 2003 and 6:00 p.m. ET March 14, 2003. Only Section I, the Tech Box from Section III-A, and the Section VI Certification of the electronically filed FCC Form 349 must be completed at this time. Late applications will not be accepted. No application filing fee is required.

**Note: A separate Form 349 must be submitted for each new station and major modification proposed. Regardless of the number of Form 349s filed, applicants must only submit one Form 175.** Applicants must specify the CDBS-assigned file number(s) of all Form 349 application(s) in the Form 175, at Exhibit F ("Miscellaneous Information").

**(2) Previously filed Form 349 applications (Frozen FM Translator Applications and Freeze Waiver Applications).**

All applicants for new FM translator stations and FM translator major modifications with an FCC Form 349 currently on file with the Commission as of the release of this Public Notice, **must electronically file an FCC Form 175 prior to March 14, 2003, 6:00 p.m. ET.** Failure of any applicant to submit FCC Form 175 will result in the dismissal of that applicant's pending FCC Form 349 application(s).<sup>1</sup> Applicants also should confirm that the information on file is accurate and complete. If no changes to the previously filed Form 349 applications are necessary, applicants must only file Form 175. The Form 175 must include the file number of **all** previously filed Form 349 applications. Failure to include the file number of a pending Form 349 application on the Form 175 will result in dismissal of that Form 349 application. If any information in a Frozen FM Translator Application or Freeze Waiver Application is no longer accurate and complete, the applicant must file a new Form 349 application electronically, completing Section I, the Tech Box of Section III-A, and the Section VI Certification. Paper amendments to pending Form 349 applications will not be accepted. By separate filing to the Office of the Secretary, the applicant also must request dismissal of the pending paper-filed Form 349 application. A courtesy copy of the dismissal request should be sent to James Bradshaw at 445 12<sup>th</sup> Street

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<sup>1</sup> As stated in the *Broadcast First Report and Order*, 13 FCC Rcd at 15960, applications pending before the Commission that have never been subjected to competing applications are required to confirm their intent in participating in an auction as part of the first general window for the relevant service.

SW, Washington D.C. 20554, Audio Division, Room 2-B450. **Note: A separate Form 349 must be submitted for each new station and major modification proposed. Regardless of the number of Form 349s filed, applicants may submit only one Form 175.** Applicants must specify the CDBS-assigned file number(s) of all Form 349 application(s) in the Form 175, at Exhibit F (“Miscellaneous Information”).

**(3) New and Major Change Applications filed after release of the Public Notice.**

Any Form 349 application for a new FM translator station or for a major modification of an FM translator station filed between 12:01 A.M. February 7, 2003, and the opening of the window will be dismissed without further consideration. Applicants must electronically file FCC Form 349 during the auction window filing period, along with FCC Form 175, as indicated above.

**B. Short-Form Application (FCC Form 175) Filing Procedures -- Due March 14, 2003 6:00 p.m. ET**

All applicants must electronically submit an FCC Form 175 application no later than 6:00 p.m. ET on March 14, 2003. Late applications will not be accepted. FCC Form 349 submissions for which no FCC Form 175 is submitted will be dismissed without further consideration. There is no application fee required when electronically filing an FCC Form 175.

**(1) Electronic Filing.**

All Form 175 applications must be filed electronically.<sup>2</sup> Applicants may file Form 175 applications electronically beginning 9:00 a.m. ET March 10, 2003. The Form 175 filing system generally will be open on a 24-hour basis. The Form 175 filing window will remain open until 6:00 p.m. ET on March 14, 2003. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline. Information regarding the electronic filing of the FCC Form 175 application is included as Attachment C to this Public Notice. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)). The hours of service are 8 a.m. - 6 p.m. ET, Monday - Friday.

**(2) 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. Instructions for completing the FCC Form 175 are in Attachment B of this Public Notice. Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Form 175. An applicant may make only minor non-technical corrections to its FCC Form 175 application after the March 14, 2003 filing deadline.<sup>3</sup> For this reason it is critical that all applicants carefully review their FCC Form 175 submissions prior to the close of the filing window.

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<sup>2</sup> See *Third Report and Order*, 13 FCC Rcd 374, 410-11; 47 C.F.R. § 1.2105(a).

<sup>3</sup> See 47 C.F.R. § 1.2105.

### **(3) Minor Modifications to FCC Form 175.**

After the short-form filing deadline (March 14, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits).<sup>4</sup> Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: [auction83@fcc.gov](mailto:auction83@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 83. WTB requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Ken Burnley of the Auctions and Industry Analysis Division at (202) 418-0660.

### **(4) Maintaining Current Information in FCC Form 175.**

Applicants have an obligation under 47 C.F.R. § 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

### **(5) Electronic Review of FCC Form 175.**

The FCC Form 175 review software may be used to review and print an applicant's FCC Form 175 application. Prior to the filing deadline, applicants may only review their own completed 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. Because the FCC Form 175s are made public, it is important that an applicant does not include its Taxpayer Identification Number (TIN) on any Exhibits to its FCC Form 175 application. There are no fees for accessing the Form 175 filing or review system.

## **C. Collusion Prohibition**

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 Form 175 filing deadline. Mutually exclusive FM translator applicants may communicate with each other for the purpose of resolving conflicts by means of engineering solutions or settlements **only during the time period prescribed by the Bureaus. The precise period for pre-auction settlement of competing applications will be specified in a later public notice.**<sup>5</sup> 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

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<sup>4</sup> *See id.* § 1.2105.

<sup>5</sup> *See id.* § 73.5002(d).

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.<sup>6</sup> However, the mere filing of 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.<sup>7</sup>

By electronically submitting their FCC Form 175 short-form applications, applicants are certifying their compliance with 47 C.F.R. 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 and 1.2105 require an auction applicant to notify the Commission promptly of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.<sup>8</sup>

#### **D. Application Processing**

After the application filing deadline, MB will process all timely and complete filings, to determine which are mutually exclusive. Non-mutually exclusive applicants will be identified by subsequent public notice and must then submit the complete FCC Form 349 within 30 days. MB also will issue a public notice identifying applications received during the window that are found to be mutually exclusive.<sup>9</sup> This public notice will also specify a settlement period for resolving application mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of universal settlement agreements.<sup>10</sup> Technical amendments submitted by applicants to resolve their mutual exclusivities must be minor, as defined by the applicable rules of the FM translator service, and must not create any new mutual exclusivity or application conflict.<sup>11</sup>

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<sup>6</sup> 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 11973, 11977 (1998) ("Nevada Wireless").

<sup>7</sup> See *Nevada Wireless*, *supra* note 9 at 11978. 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. See 47 C.F.R. § 1.2105(c).

<sup>8</sup> The Commission amended Section 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Seventh Report and Order*, 16 FCC Rcd 17546, 17555 (2001).

<sup>9</sup> See *id.* § 74.1233(d)(3). All mutually exclusive applications will be considered under the relevant procedures for conflict resolution.

<sup>10</sup> See *id.* § 73.5002(d)(3).

<sup>11</sup> See *id.* § 74.1233(a)(1).

Commercial applications that remain mutually exclusive after the settlement period closes will proceed to auction. MB and WTB will then issue a public notice identifying the auction date and seek comment on procedures for further processing the remaining mutually exclusive Form 175 applications, including identifying those Form 175 applications with minor defects that may be corrected.