



PUBLIC NOTICE

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AUCTION NO. 81 **FINAL SETTLEMENT WINDOW ANNOUNCED**

Window to Close March 5, 2004

The Media Bureau and Wireless Telecommunications Bureau (Bureaus) announce a settlement window for parties with proposals in the mutually exclusive groups in Auction No. 81 to enter into settlement agreements or otherwise resolve their mutual exclusivities by means of engineering solutions. The settlement window shall open with the release date of this Public Notice and close on March 5, 2004. This will be the final opportunity for parties to file settlements or to submit engineering amendments to their pending engineering proposals. No settlements or engineering amendments will be accepted after the close of this window.

A final settlement period for these low power television (LPTV) applicants would serve the public interest. Approximately 2,900 LPTV applications filed during the Auction No. 81 window are pending. We note that many of these groups of mutually exclusive LPTV applications consist of proposals to serve rural and other underserved areas with over-the-air television service. Moreover, many of these groups contain geographically-dispersed “daisy chain” applications that overlap only partially, and may present opportunities for engineering solutions to avoid mutual exclusivity. Settlements by certain applications in such groups may eliminate mutual exclusivity among additional applications in the same group. The Commission has previously recognized that, while it is not compelled by statute to allow competing broadcast applicants to resolve their mutual exclusivities following the submission of short-form applications, the public interest may be furthered by allowing settlements in secondary broadcast services, particularly the LPTV service.¹

¹ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Memorandum Opinion and Order, 14 FCC Rcd 8724, 8755-58 ¶¶ 61-64 (1999)(*Broadcast Auctions MO&O*). In reaching that determination, the Commission acknowledged that LPTV has certain unique characteristics, including restrictions on power, limited coverage areas, and secondary status to full-service TV and DTV stations (rendering LPTV subject to potential displacement). *Id.* at 8757-8 ¶ 64.

We remind applicants that the rules prohibiting collusion became effective upon the filing of short-form applications.² During this period, applicants will have this final opportunity to discuss with other applicants possible settlements or technical solutions to resolve mutual exclusivities.³ Once this final settlement period is completed, the anti-collusion restrictions will again take effect.

Parties must ensure that their settlement agreements comply with the provisions of Section 311(c) of the Communications Act of 1934, as amended, and the pertinent requirements of Section 73.3525 of the Commission's Rules, including, *inter alia*, the reimbursement restrictions. The parties must submit the agreements and affidavits required by Section 73.3525 and/or any engineering submission by the deadline. The staff will request complete FCC Form 346's from the proposed permittee(s) upon approval of the settlement submission.

Applicants resolving their mutual exclusivities by means of engineering solution may do so by submitting an amended Section I, the Tech Box of Section III and Question 12 of Section III of FCC Form 346 (June 2000 version). The staff will request complete FCC Form 346's upon confirmation that the engineering submission does, in fact, resolve the specific mutual exclusivity. Technical amendments submitted by applicants to resolve their mutual exclusivities must be minor, as defined by the applicable rules, and must not create new mutual exclusivity or application conflict.⁴

Consistent with the *Broadcast First Report and Order* and Section 73.5002 of the Commission's Rules,⁵ such engineering submissions must resolve the mutual exclusivities for the entire mutually exclusive group. Therefore, except as provided below, no "partial settlements" (which reduce the number of proposals in a group, but which do not completely resolve the mutual exclusivity of that group) will be permitted. Certain groups in this auction contain "daisy chains" of mutual exclusivity whereby proposals are directly mutually exclusive with certain proposals in the group but not others. A "daisy chain" occurs when two or more proposals contain service areas that do not directly overlap but are linked together into a chain by the overlapping proposal(s) of other(s). In such cases, the potential exists to grant more than one application and issue more than one construction permit for that mutually exclusive group. Therefore, in the daisy chain groups, we will permit "partial settlements" by which some of the daisy chain applicants can separate themselves from the daisy group to form a new, smaller mutually exclusive group. However, the mutual exclusivity in the new, smaller group must be completely resolved by either engineering amendment or settlement. We will not consider settlements that simply break apart a daisy chain group into smaller groups of applicants whose mutual exclusivities still must be resolved by auction.

For additional information or questions on this matter, please contact Shaun Maher of the Video Division, Media Bureau at 202-418-1600.

² See 47 C.F.R. § 1.2105(c).

³ The Commission has observed that the usual role of the anti-collusion rule has less significance in this context because LPTV has minor competitive significance in the media marketplace. See *Broadcast Auctions MO&O*, 14 FCC Rcd at 8755-58 ¶¶ 61-64.

⁴ See 47 C.F.R. § 73.3572.

⁵ See Implementation of Competitive Bidding for Commercial Broadcast and ITFS Licenses, *Broadcast First Report and Order*, 13 FCC Rcd 15920 (1998); 47 C.F.R. § 73.5002.