

ATTACHMENT D

INSTRUCTIONS FOR COMPLETING FCC FORM 601 AND FORM 602

Applicants are strongly encouraged to use the format below to submit FCC Form 601 and exhibits to Form 601 as required by our rules. Following this format will help expedite processing of FCC Form 601 and minimize follow up requests for missing information. Applicants seeking tribal lands bidding credits must comply with the instructions contained in Part IV of this Attachment.

I. FCC FORM 601 GENERAL REQUIREMENTS

Applicants bear full responsibility for submission of timely and complete FCC Form 601 applications. Applicants should read the instructions on the FCC Form 601 carefully and should consult the rules to ensure that, in addition to the materials described below, all the information that is required under our rules is included with their FCC Form 601 applications. Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application. See 47 C.F.R. § 1.65. **Incomplete or defective applications may be returned to the applicant.** See 47 C.F.R. § 1.934(a), (d); see also 47 C.F.R. § 1.933(b).

Applicants must file FCC Form 601 electronically. An applicant that fails to submit the required FCC Form 601 application(s) by **6:00 p.m. ET on February 17, 2004**, and fails to establish good cause for any late-filed submissions, shall be deemed to have defaulted and will be subject to the default payments set forth in Section 1.2104(g) of the Commission's Rules. See 47 C.F.R. §§ 1.2104(g), 1.2107(c).

Number of Forms To Be Filed. Applicants applying for multiple licenses may submit *one* FCC Form 601 (including all required schedules, attachments, and exhibits) if *all* filing requirements associated with the application are identical *except* for the market designator(s) and market name(s). An applicant seeking tribal lands bidding credits in one or more, but not all markets, however, is encouraged to submit two applications in order to separate those markets in which the applicant intends to apply for tribal lands bidding credits from those markets in which the applicant is not seeking tribal lands bidding credits.

II. FILING FCC FORM 601 ELECTRONICALLY

1. Access the Commission's Universal Licensing System (ULS) through the Internet at **<http://wireless.fcc.gov/uls>**. Select the **Online Filing** button from this page.

You may also connect to ULS Online Filing by establishing a direct dial-up connection to ULS by pointing your web browser to **<http://wireless.fcc.gov/uls>** and selecting the ULS Online Filing button. (Follow the instructions set forth in **Attachment F** to this Public Notice on accessing ULS through a direct dial-up connection.)

Note: You may use Netscape Communicator (v. 4.5, 4.51, 4.61, 4.7x) or Internet Explorer (v. 5.5 or later) browser software to electronically register and file FCC Form 601 through ULS. You can download Netscape Communicator free of charge by accessing the Netscape download site at <http://home.netscape.com/download/archive.html>. You may also download Internet Explorer at <http://www.microsoft.com/windows/ie/downloads/default.asp>.

2. On the ULS License Manager login page, enter the applicant's FCC Registration Number (FRN) and password. Click **Submit**. ULS will verify you have a valid FRN or otherwise prompt you to obtain an FRN through the Commission Registration System (CORES).

Note: You must login to ULS with the FRN used to identify the applicant on Form 175.

For instructions on assigning existing call signs to your FRN, see **Attachment E**. For additional information on the FRN, see All Universal Licensing System and Antenna Structure Registration. Applicants must use their FCC Registration Number(s), effective December 3, 2001, *Public Notice*, 16 FCC Rcd 18793 (2001), <http://wireless.fcc.gov/uls/releases/da012452.txt>. For technical assistance contact the FCC Technical Support Hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY). All telephone calls are recorded.

3. After you have entered the FRN and password correctly, you will see the "My Licenses" page displaying the applicant's existing licenses (if any) and related information. To apply for a new license, click the **Apply for a New License** navigation link on the left-hand side of the page.
4. On the Select Service page, choose the Auction ID dropdown menu. Then select the following auction ID:

Auction 53 – DV – Multichannel Video Distribution & Data Service (MVDDS)

Click **Continue**.

5. Supply the information requested by FCC Form 601 and the Commission's Rules.

If you plan to file a request for a waiver or exception to the Commission's Rules, select "Yes" for the third question.

Note: The Online Filing function of ULS triggers the automatic downloading of certain Java files by your web browser. These files will enable your system to communicate securely with ULS. To operate correctly, you must grant permission for these files to be downloaded and installed on your system. Please see <http://wireless.fcc.gov/uls/support/gettingconnected.html> for more information on this feature.

6. After supplying all the requested information, fill in your signature information at the bottom of the page and click **Continue**.
7. The following page lists all of the markets won by the applicant at the auction that have the same radio service code. Select the market(s) you want to apply for in this application by clicking on the box to the right of the market name. If you are applying for markets in which you intend to seek tribal lands bidding credits, see Section IV of this Attachment.
8. After the market(s) have been selected, click on the **Attachments** button, and upload the required attachments as described in the following section. Be sure to use the standard attachment types and file descriptions set forth herein.
9. When finished uploading attachments, close the Attachment window. Then click **Continue**. At this point you may either choose **Print Preview**, to review your application, or choose **Submit** to file it with the Commission.

10. You will receive a confirmation page when you press the **Submit** button. Note the file number for your records. Choose “Return to License Manager.” You may use the link at the top left of any page in License Manager to logout.

Updating an Application

You may reaccess your application to make changes during the 10-day filing window following the close of the auction:

- If you quit your application at any time prior to submitting it, it will be saved in ULS. To continue working on a saved application, login to ULS License Manager. Choose the My Applications link from the menu on the left side of the page, and click on the Saved link. Then click the link next to your saved application. On the next page, “Application At A Glance,” choose the **Continue** button under the Work on This Application menu. Saved applications for an auctionable service must be completed within the specific filing window of the auction.
- Once you click the **Submit** button, ULS will assign a file number to the application. To make changes to a submitted application, log in to ULS License Manager with the Applicant’s FRN and password. Choose the “My Applications” link from the left side of the page. Then choose the Submitted applications link. Click on the file number of your application, and choose the Update link from the “Work on This Application” menu on the right side of the page. You must click the **Submit** prior to the close of the 10-day filing window.

Note: To change any information on your application **after** the 10-day filing window has closed, log in to ULS License Manager with the applicant’s FRN and Password. Choose the My Application link from the left side of the page. Then click Pending applications. Click on the file number of your application, and choose the Update link from the Work on This Application menu on the right side of the page.

Important: Changes made on an application after it has been submitted to the Commission in ULS constitute an Amendment(s) to the application.

FCC rules contain limitations on filing of major amendments after the February 17, 2004, deadline that may affect the applicant's legal rights. Acceptance of an amendment by ULS does not indicate that the amendment is allowed under the rules. Applicants are advised to consult FCC rules in this regard prior to filing an amendment. Once the FCC has granted a request for a license, you can change that license by requesting a modification.

Basic Guidelines for Filing Form 601 Online:

- Some of the data entry fields on the online application form may be prefilled with information from the Form 175 process for auctionable applications.
- The online application consists of data entry fields as well as “yes or no” questions. You must respond to all of these questions on the application. If you respond “Yes” to a question, you may be required to file an attachment explaining the specific circumstances (see form for specific instructions).
- An **Attachments** button is provided for uploading attachment files. You are responsible for filing all required attachments.
- An Errors screen will list any erroneous or incomplete information you have provided. Click **Return**, make your corrections, and then click **Continue** again. You can **Save** your

application and complete it at a later date if necessary. Saved applications must usually be completed within 30 days; however, applications for an auctionable service must be completed within the specific filing window of the auction, in this case before 6:00 p.m. ET on February 17, 2004.

- Prior to submitting an application, you may click the **Print Preview** button (where available) to create a preview of your completed application.

Technical Support

For technical assistance with installing or using FCC software, contact the FCC Technical Support Hotline at (202)-414-1250 (voice) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. Eastern Time. There are no weekend hours and the hotline is closed on all Federal holidays. All calls to the FCC Technical Support Hotline are recorded.

To provide quality service and ensure security, all telephone calls are recorded.

III. ORGANIZATION OF APPLICATION EXHIBITS

Form 601- and Rule-Related Exhibits. Any exhibits to be attached to an application in response to a question on the Main Form or Schedule B of FCC Form 601 or as specified in the Commission's Rules should be identified as specified in the instructions to the FCC Form 601. Applicants should use the Attachment screen provided within the electronic filing software to submit these exhibits as uploaded files and should select the appropriate attachment type. The electronic filing software will accept many different types of computer files. See http://wireless.fcc.gov/uls/support/help/help_attach.html for a full list of acceptable file formats. Do Not add password protection to attached files.

Any exhibits to be attached to an application as a result of our rule requirements should be uploaded and identified as follows:

<u>Title</u>	<u>Required From</u>
Exhibit A: Ownership	All Applicants
Exhibit B: Foreign Ownership	If Applicable
Exhibit C: Designated Entities	Designated Entity Applicants
Exhibit D: Agreements & Other Instruments	If Applicable
Exhibit E: Confidentiality Requests	If Applicable
Exhibit F: Waiver Requests	If Applicable
Exhibit G: Eligibility Restriction/ Divestiture	If Applicable
Exhibit H: Miscellaneous Information	If Applicable
Exhibit X: Tribal Government Certification	If Applicable ¹
Exhibit Y: Tribal Lands Waiver Requests	If Applicable ²

¹ Applicants applying for markets where they are seeking a tribal lands bidding credit must attach all tribal government certifications, applicant certifications, and waiver exhibits, as applicable, within 180 days of filing their long-form application. See discussion in Section IV. Applicants do not need to include these attachments in applications in which tribal lands bidding credits are not being sought. See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, ¶ 10 (2003) ("*Tribal Lands Second Report and Order*").

² See *id.*

As specified in the instructions to the FCC Form 601, each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit, and the total number of pages of the exhibit.

EXHIBIT A: OWNERSHIP INFORMATION

Section 1.2112 of the Commission's Rules requires that each applicant for a license shall disclose fully the real party- or parties-in-interest. *See* 47 C.F.R. § 1.2112(a). To provide this information, applicants should upload a file, select Attachment Type "Ownership," and enter "**Exhibit A: Ownership**" in the File Description field on the Attachment Screen.

Applicants should provide the information concerning the applicant (*i.e.*, real party- or parties-in-interest), and the ownership interests held in the applicant and in investors in the applicant, in the format described below. Each application shall be clear and complete in itself without cross-reference to information previously filed. All pages should be clearly labeled to indicate the Exhibit and Item number to which those pages relate.

Part 1: Direct Ownership: Applicant must provide information regarding its direct ownership as follows:

- *General Rule:* The applicant must provide the name, address, and citizenship of any party holding 10 percent or more of stock in the applicant, whether voting or nonvoting, common or preferred, including the specific amount of the interest or percentage held. *See* 47 C.F.R. § 1.2112(a)(1).
- If the applicant is a general partnership, provide the name, address, and citizenship of each partner, and the share or interest participation in the partnership. *See* 47 C.F.R. § 1.2112(a)(3).
- If the applicant is a limited partnership, provide the name, address, and citizenship of each limited partner whose interest in the applicant is 10 percent or greater (as calculated according to the percentage of equity paid in or the percentage of distribution of profits and losses). *See* 47 C.F.R. § 1.2112(a)(2).
- If the applicant is a limited liability company, provide the name, address, and citizenship of each of its members whose interest in the applicant is 10 percent or greater. *See* 47 C.F.R. § 1.2112(a)(4).

Part 2: Indirect Ownership: Applicants must identify all parties holding indirect ownership interests in the applicant, as determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain, that equals 10 percent or more of the applicant, except that if the ownership percentage for an interest in any link in the chain exceeds fifty percent or represents actual control, it shall be treated and reported as if it were a one hundred percent interest. *See* 47 C.F.R. § 1.2112(a)(5).

Part 3: Other Disclosable Interests and Entities: Applicants must list any FCC-licensed entity or applicant for an FCC license in which the applicant or any of the parties identified in Sections 1.2112(a)(1)-(5) of the Commission's Rules owns 10 percent or more of stock, whether voting or

³ *See id.*

nonvoting, common or preferred. This list must include a description of each such entity's principal business and a description of each entity's relationship to the applicant. *See* 47 C.F.R. § 1.2112(a)(6).

Note: Applicants may provide information required in Parts 1 through 3 above by scanning and attaching a copy of their current FCC Form 602 (in Adobe PDF) as an exhibit to FCC Form 601. To avoid inadvertent disclosure of TIN information, applicants submitting a copy of FCC Form 602 as an attachment to FCC Form 601 should not include TIN information on the copy of FCC Form 602 or should block out this information (*i.e.*, for a current FCC Form 602 filed prior to September 10, 2002). Applicants are reminded, however, that a current FCC Form 602, must be filed, or be on file, by the filing deadline for the FCC Form 601. *See* discussion in Section V.

EXHIBIT B: FOREIGN OWNERSHIP

If the applicant has responded “yes” to either Question 40, 41, 42, 43, or 44 on the FCC Form 601, it must explain the circumstances regarding foreign ownership in the applicant. To provide this information, the applicant should select Attachment Type “Ownership” and enter “**Exhibit B: Foreign Ownership**” in the File Description field on the Attachment Screen. For every direct or indirect foreign owner, applicant should provide the following information:

Item (1) Percentage of Interest: Identify each foreign owner's percentage of ownership in the applicant.

Item (2) Country of Origin and Address: List each foreign owner's country of origin and principal place of business.

Item (3) Public Interest Statement: Demonstrate how allowing the applicant to hold the requested license is consistent with the Commission's policies pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended. In the *Foreign Participation Order*,⁴ the Commission stated that there is a presumption that indirect foreign ownership of common carrier radio licenses by entities whose home markets are World Trade Organization (WTO) Members is in the public interest. If more than twenty-five percent of the ownership of an entity that controls a common carrier radio license is attributable to parties whose home markets are non-WTO member countries, the Commission will evaluate whether those markets offer effective competitive opportunities to U.S. investors.⁵

Item (4) Petitions for Declaratory Ruling: As explained in the Commission's *Foreign Participation Order*, licensees must seek the Commission's prior approval before accepting indirect foreign ownership that causes them to exceed Section 310(b)(4)'s twenty-five percent benchmark.⁶ In keeping with this pre-approval process, auction applicants are required to certify in their FCC Form 175 applications that they either are in compliance with the foreign ownership requirements of Section 310 or that they have filed a request for relief from those requirements that is pending with the Commission.⁷ Similarly, where foreign ownership is at issue, applicants must indicate in their FCC Form 601 applications that they either have received a declaratory ruling that grants them permission to exceed the statutory benchmark of Section 310(b)(4) or that they have a request currently pending at the Commission. Applicants are advised that

⁴ Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95-22, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891 (1997) (“*Foreign Participation Order*”), *Order on Reconsideration*, 15 FCC Rcd 18158 (2000).

⁵ *See Foreign Participation Order* at 23891, 23935-42, 23946, ¶¶ 97-118, 131.

⁶ *Id.*

⁷ *See* 47 C.F.R. § 1.2105(a)(2)(v), (vi).

petitions for declaratory ruling to exceed the Section 310(b)(4) benchmark must be granted before any license for which the applicant is a high bidder may be granted.

Petitions for a declaratory ruling to exceed the Section 310(b)(4) twenty-five-percent statutory benchmark should be addressed to the Secretary, with a copy to the Telecommunications Division of the International Bureau, and must be filed in paper form. There is no fee associated with such a filing. Applicants should be aware that, under the relevant precedent, including the Commission's *Foreign Participation Order*, streamlined processing is possible for petitions involving investment from WTO Members that do not raise any other potentially complex foreign ownership issues. The Commission may conclude that a particular petition of this type is not eligible for streamlined processing. If more than twenty-five percent of the ownership of an entity that controls a common carrier radio license is attributable to parties whose home markets are non-WTO Members, such petitions are not eligible for streamlined processing, and these petitioners should contact the Telecommunications Division of the International Bureau to discuss processing of their petitions. Inquiries regarding compliance with Section 310 of the Communications Act and the filing and processing of petitions for declaratory ruling should be directed to Claudia Fox, Chief of the Policy and Facilities Branch, Telecommunications Division, International Bureau, at (202) 418-1527.

EXHIBIT C: DESIGNATED ENTITIES

Pursuant to Section 1.2110(f)(1) of the Commission's Rules, the Commission may award bidding credits (*i.e.*, payment discounts) to eligible designated entities. Section 101.1429(a) of the Commission's Rules establishes the following designated entities as eligible for small business provisions: a very small business, a small business, an entrepreneur, a consortium of very small businesses, a consortium of small businesses, and a consortium of entrepreneurs in the MVDDS auction (Auction No. 53). *See* 47 C.F.R. § 101.1429(a).⁸

Very Small Businesses under Section 101.1429(a)(1): A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding **\$3 million** for the preceding three years. *See* 47 C.F.R. §§ 1.2110(f)(2)(i), 101.1429(a)(1). Very small businesses are eligible for bidding credits of **thirty-five percent (35%)** to lower the cost of their winning bids. *See* 47 C.F.R. §§ 1.2110(f)(2)(i), 101.1429(b).

Small Businesses under Section 101.1429(a)(2): A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding **\$15 million** for the preceding three years. *See* 47 C.F.R. §§ 1.2110(f)(2)(ii), 101.1429(a)(2). Small businesses are eligible for bidding credits of **twenty-five percent (25%)** to lower the cost of their winning bids. *See* 47 C.F.R. §§ 1.2110(f)(2)(ii), 101.1429(b).

Entrepreneurs under Section 101.1429(a)(3): An entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding **\$40 million** for the preceding three years. This definition applies only with respect to licenses in MVDDS as specified in § 101.1429(a)(3). *See* 47 C.F.R. §§ 1.2110(f)(2)(iii), 101.1429(a)(3). Entrepreneurs are eligible for bidding

⁸ *See also* Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9711 (2002) (“*Second Report and Order*”).

credits of **fifteen percent (15%)** to lower the cost of their winning bids. *See* 47 C.F.R. §§ 1.2110(f)(2)(iii), 101.1429(b).

Consortium of Very Small Businesses, Consortium of Small Businesses, and Consortium of Entrepreneurs under Section 101.1429(a)(4): A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a very small business; that is, an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding **\$3 million** for the preceding three years. *See* 47 C.F.R. §§ 1.2110(b)(3)(i), 101.1429(a)(4). A consortium of very small businesses is eligible for bidding credits of **thirty-five percent (35%)** to lower the cost of its winning bids. *See* 47 C.F.R. §§ 1.2110(f)(2)(i), 101.1429(b). A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business; that is, an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding **\$15 million** for the preceding three years. *See* 47 C.F.R. §§ 1.2110(b)(3)(i), 101.1429(a)(4). A consortium of small businesses is eligible for bidding credits of **twenty-five percent (25%)** to lower the cost of its winning bids. *See* 47 C.F.R. §§ 1.2110(f)(2)(ii), 101.1429(b). A consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of an entrepreneur; that is, an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding **\$40 million** for the preceding three years. *See* 47 C.F.R. §§ 1.2110(b)(3)(i), 101.1429(a)(4). A consortium of entrepreneurs is eligible for bidding credits of **fifteen percent (15%)** to lower the cost of its winning bids. *See* 47 C.F.R. §§ 1.2110(f)(2)(iii), 101.1429(b).

In order to demonstrate eligibility for any such designated entity status, applicants must upload a file, select Attachment Type “Ownership” and enter “**Exhibit C: Designated Entities**” in the File Description field on the Attachment screen. In the exhibit, applicants should include the applicable information:

- (i) Identify the applicant’s claimed eligibility status.
- (ii) Calculate the Gross Revenues:

For Very Small Businesses, Small Businesses, and Entrepreneurs: For purposes of determining whether an entity is a very small business, a small business or an entrepreneur, the gross revenues of the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests shall be considered on a cumulative basis and aggregated. *See* 47 C.F.R. §§ 1.2110(b)(1), 1.2112(b)(2)(iii). To comply, provide in accordance with Section 1.2110(n) of the Commission’s Rules, 47 C.F.R. § 1.2110(n), the gross revenues for the most recently completed three calendar or fiscal years preceding the filing of the applicant’s FCC Form 175, separately for the applicant, each of its affiliates, each of its controlling interests, and each of the affiliates of its controlling interests. *See* 47 C.F.R. § 1.2112(b)(2)(iii); *see also* 47 C.F.R. § 1.2110(b)(3)(n). Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business, as evidenced by audited financial statements. If the applicant does not use audited financial statements, its gross revenues must be certified by its chief financial officer or its equivalent and must be prepared in accordance with Generally Accepted Accounting Principles. If an entity was not in existence for all or part of the preceding three years, gross revenues shall be evidenced by the audited financial statements of the entity’s predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. *See* 47 C.F.R. § 1.2110(n).

Calculate the average gross revenues separately for the applicant, each affiliate, each of its controlling interests, and each affiliate of the applicant’s controlling interests for those three years. Provide the

aggregate average gross revenues for the applicant, its affiliates, its controlling interests, and affiliates of its controlling interest for those three years. *See* 47 C.F.R. §§ 1.2110(b)(1), 1.2112(b)(2)(iii).

For a Consortium of Very Small Businesses, a Consortium of Small Businesses, and a Consortium of Entrepreneurs: Applicants that applied as a consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs as defined in Sections 1.2110(b)(3)(i) and 101.1429(a)(4) of the Commission’s Rules, 47 C.F.R. §§ 1.2110(b)(3)(i), 101.1429(a)(4), must compute and indicate gross revenues as outlined above for *each* very small business, small business or entrepreneur in the consortium. That is, each business entity comprising the very small business, small business or entrepreneur consortium must qualify and show gross revenues separately. The average gross revenues of all of the very small businesses, small businesses or entrepreneurs in the consortium shall not be aggregated. *See* 47 C.F.R. §§ 1.2110(b)(3)(i), 101.1429(a)(4).

(iii) Controlling Interests and Affiliates:

All controlling interests and affiliates, as defined by the Commission’s Rules, must be included in the gross revenue calculations discussed above. *See* 47 C.F.R. § 1.2110(c)(2), (c)(5). Please note the following:

- Officers and directors of the applicant or of an entity that controls the applicant are considered to have a controlling interest in the applicant. *See* 47 C.F.R. § 1.2110(c)(2)(ii)(F).
- Any person who manages the operations of an applicant pursuant to a management agreement may be considered to have a controlling interest in the applicant. *See* 47 C.F.R. § 1.2110(c)(2)(ii)(H).
- Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or its affiliate may be considered to have a controlling interest in the applicant. *See* 47 C.F.R. § 1.2110(c)(2)(ii)(I).

(iv) Minority-Owned and Women-Owned Business and Rural Telephone Companies

We are interested in the status of applicants as minority-owned and women-owned businesses and rural telephone companies for statistical purposes, even if the applicant is ineligible for bidding credits. *See* 47 C.F.R. § 1.2110(c)(3), (4).

EXHIBIT D: AGREEMENTS & OTHER INSTRUMENTS

All applicants must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint ventures, partnerships or other agreements or arrangements entered into relating to the competitive bidding process prior to the time the bidding was completed. *See* 47 C.F.R. § 1.2107(d).

Applicants claiming designated entity status must list and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant’s eligibility as a small business or a consortium of small businesses, including the establishment of *de facto* and *de jure* control. *See* 47 C.F.R. § 1.2112(b)(2)(i). Such agreements and instruments include, but are not limited to, articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written. *See* 47 C.F.R. § 1.2112(b)(2)(i). These applicants also must list and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and

rights to hire and fire employees and to appoint members to boards of directors or management committees. *See* 47 C.F.R. § 1.2112(b)(2)(ii).

To comply with these requirements, applicants may submit either the agreements themselves or a detailed summary of those agreements. Applicants should upload the information in a file, select Attachment Type “Other” and enter “**Exhibit D: Agreements & Other Instruments**” in the File Description field on the Attachment screen. Applicants choosing to submit the agreements may elect to seek confidentiality for those documents pursuant to section 0.459 of the Commission’s Rules. *See* 47 C.F.R. § 0.459; *see also* discussion of confidentiality requests under “Confidentiality Requests” below.

EXHIBIT E: CONFIDENTIALITY REQUESTS

Applicants should be aware that all information required by the Commission’s Rules in connection with applications to participate in spectrum auctions is necessary to determine the applicants’ qualifications and, as such, will be available for public inspection. Required proprietary information may be redacted, and confidentiality may be sought pursuant to Section 0.459 of the Commission’s Rules. *See* 47 C.F.R. § 0.459. Applicants requesting confidential treatment for any information required as a condition to participate in the auction must follow the procedures set out in Section 0.459 of the Commission’s Rules. *See* 47 C.F.R. § 0.459. (Applicants submitting confidentiality requests should be aware that 47 C.F.R. § 0.459 was recently amended to set out more clearly what should be contained in a request that information not be made routinely available for public inspection. *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, *Report and Order*, 13 FCC Rcd 24816 (1998)). Because the required information bears on an applicant’s qualifications, the Commission envisions that confidentiality requests will not be granted routinely.

If an applicant has sought confidential treatment of any information, it must attach a statement explaining the request and referencing the particular information for which confidential treatment has been requested. To provide this information, applicants should upload this statement as a file, select Attachment Type “Confidentiality” and enter “**Exhibit E: Confidentiality Requests**” in the File Description field on the Attachment Screen.

Note: Applicants must select Attachment Type “Confidentiality” for the particular exhibit for which they are requesting confidential treatment. Otherwise, the attachment will be available for public inspection.

EXHIBIT F: WAIVER REQUESTS

Note: This part does not apply to tribal lands waiver requests. For tribal lands waiver requests, see Section IV, “Exhibit Y: Tribal Lands Waiver Requests.”

In the event that a winning bidder wishes to file a request for waiver, the request should be filed with the corresponding application. Applicants should upload this waiver request as a file, select Attachment Type “Waiver” and enter “**Exhibit F: Waiver Requests**” in the File Description field on the Attachment screen.

Waiver requests filed after the submission of the FCC Form 601 may result in a delay of the processing of the application. If a request for waiver is filed separately from the FCC Form 601, such request must refer to the corresponding application, including its file number.

EXHIBIT G: ELIGIBILITY RESTRICTION/DIVESTITURE

Applicants should note that Section 101.1412 of the Commission's rules provides certain eligibility restrictions for cable operators. (See 47 C.F.R § 101.1412; see also *Second Report and Order* at ¶¶159-170). Specifically, no cable operator, nor any entity owning an attributable interest in a cable operator, shall have an attributable interest in an MVDDS license if such cable operator's service area significantly overlaps the MVDDS license area. (See 47 C.F.R § 101.1412(a)). Applicants that comply with these eligibility restrictions need not attach Exhibit G. Pursuant to Section 101.1412(f)(3) applicants with an attributable interest in a cable operator must submit with their long-form application a signed statement describing their efforts to date and future plans to come into compliance with the eligibility restrictions in Section 101.1412(a). This statement should be attached as Exhibit G. If such an MVDDS applicant is otherwise qualified, its application will be granted subject to a condition that the applicant shall come into compliance with the eligibility restrictions in paragraph (a), within ninety days of final grant of such MVDDS license. (See 47 C.F.R § 101.1412(g)(4)).

EXHIBIT H: MISCELLANEOUS INFORMATION

In the event that a winning bidder wishes to provide any additional information that does not fall within any of the other exhibits, these documents or files should be submitted by selecting Attachment Type "Other" and entering "**Exhibit H: Miscellaneous Information**" in the File Description field on the Attachment Screen.

IV. INSTRUCTIONS FOR APPLICANTS SEEKING TRIBAL LANDS BIDDING CREDITS

Filing the Long-Form Application: Winning bidders interested in receiving a tribal lands bidding credit must indicate on the long-form application (FCC Form 601, Schedule B) each market for which they will seek the credit by clicking on the appropriate box. See 47 C.F.R. §§ 1.2107(e), 1.2110(f)(3). For a list of the tribal lands in each Designated Market Area (DMA), go to the Auction website at <http://wireless.fcc.gov/auctions> and click on "Tribal Land Credits," and then click on "Cross References." Instructions for applying for tribal lands bidding credits through ULS are also provided at the above-referenced website. Click on "Tribal Land Credits," and then click on "ULS Application Instructions." For additional information on the tribal land bidding credit, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices.⁹

Applicants indicating that they intend to serve a qualifying tribal land in any market(s) within the application will have an additional 180 days after the long-form application deadline within which to secure the necessary certifications from tribal authorities. Within this 180-day period, applicants must amend their application to provide the requisite tribal information and provide the applicant

⁹ See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775 (2003); *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11794 (2000); "Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits," *Public Notice*, 16 FCC Rcd 5355 (2001); "Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands," *Public Notice*, 15 FCC Rcd 24838 (2000); "Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands: Tribal Land Bidding Credits To Be Available Beginning In Auction No. 36 (800 MHz Specialized Mobile Radio (SMR) Lower 80 Channels) And In Future Auctions," *Public Notice*, 15 FCC Rcd 18351 (2000).

certification.¹⁰ Applicants seeking a tribal lands bidding credit for some, but not all, markets in which they were the high bidder are encouraged to submit two applications. One application will include markets in which the applicant intends to apply for a tribal lands bidding credit. The other application will include those markets in which the applicant is not seeking a tribal lands bidding credit.

Any applicant that intends to apply for tribal lands bidding credits must do so by the filing deadline for the long-form applications. Applicants will not be permitted to amend their applications after the filing deadline to indicate that they intend to seek a tribal lands bidding credit for a market. However, it is possible for applicants to update an application to indicate that they no longer intend to seek tribal lands bidding credits in a particular market. Applicants that elect to seek the tribal lands bidding credit when they initially submit the long-form application, but then subsequently decide not to seek the credit, should update their applications to delete the request for the tribal lands bidding credit.

Updating the Long Form Application:

To update a Form 601 application during the filing window, see “Updating an Application” in Section II above. To update a Form 601 application after it has been officially reviewed by the Commission (within the 180-day period), the applicant must re-enter ULS. *See* 47 C.F.R. § 1.2110(f)(3)(ii).

1. Access the Commission’s Universal Licensing System (ULS) through the Internet at <http://wireless.fcc.gov/uls>. Select the **Online Filing** button from this page.
2. At the Log In page, enter the applicant’s FCC Registration Number (FRN) and password. Click **Submit**.

Note: An FRN is required to access ULS. See **Attachment E** for additional information.

3. Choose the My Applications link from the left side of the page. Then choose the Pending applications link.
4. Click on the file number of your application to view the Application At a Glance page. Click the Update link from the Work on This Application menu on the right side of the page to load Form 601.
5. The system will display the first page of the long-form 601. If you are requesting a waiver pertaining to the tribal lands information or bidding credit, select “yes” for the third question on this page. Click **Continue**.
6. ULS will present a table, the Schedule B, consisting of the markets selected by the applicant on the initial long-form application, along with the box indicating whether or not tribal lands bidding credit is being sought for the markets. Click **Continue**.
7. ULS will present a drop-down list consisting of the markets where a tribal lands bidding credit is being sought. Select the market for which you have tribal government certifications and click “Edit Tribal Lands.”

¹⁰ The Commission, in a Second Report and Order, extended the tribal lands certification period to 180 days. *See Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd at 4778-9 ¶10. The new 180-day certification period became effective until July 1, 2003. *See* 68 Fed. Reg. 23417 (May 2, 2003).

8. ULS also will provide the names of the federally recognized tribal lands in each market and the square kilometers of each tribal land within that market. For each market where a tribal lands bidding credit is being sought, the applicant must mark the tribal lands that it intends to serve and attach a signed, tribal government certification from each of the federally recognized tribal governments and an applicant certification. *See* “**Exhibit X: Tribal Government Certification**” and “**Exhibit Z: Applicant Certification**.”

ULS will calculate the bidding credit amount for each market automatically, according to the size (in square kilometers) of the tribal territory within the market, and in compliance with the bidding credit limit. *See* 47 C.F.R. § 1.2110(f)(3)(iii), (iv). If multiple spectrum blocks are won in the same market, the winning bid amounts for the spectrum blocks serving tribal lands will be aggregated and the bidding credit limit will be applied against the aggregated amount.¹¹

If the applicant is seeking a bidding credit in excess of the amount calculated pursuant to Section 1.2110(f)(3), the applicant must submit a waiver request, pursuant to Section 1.925 of the Commission’s Rules. *See* 47 C.F.R. § 1.925. Each waiver request will be evaluated on a case-by-case basis. *See* “**Exhibit Y: Tribal Lands Waiver Requests**.”

EXHIBIT X: TRIBAL GOVERNMENT CERTIFICATION

Within the 180-day period, the applicant must amend its long-form application to provide the required tribal government certifications for each tribal land identified in the application. *See* 47 C.F.R. § 1.2110(f)(3)(ii)(A). The tribal government certifications **must be signed** by an officer, allotment owner(s), or corporate officer of the tribal lands, Indian allotment, or Alaska Native land, respectively, and uploaded as an Adobe Portable Document Format (PDF). Each tribal government certification should be attached separately by selecting Attachment Type “Tribal Government Certification” and entering “**Exhibit X: Tribal Government Certification**” in the Description Field on the Attachment Screen. In addition, the Description Field should indicate the market and tribal lands to which the certification pertains (*e.g.*, “Exhibit X: Tribal Government Certification (“DMA026, San Diego, Capitan Grande Reservation”)).

A tribal government certification must state that:

1. The tribal area to be served by the winning bidder is a federally-recognized Indian tribe’s reservation, Pueblo, Colony, Alaska Native region, or Indian allotment, and has a wireline telephone subscription rate at or below seventy (70) percent;
2. The tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land; and
3. The tribal government will permit the applicant to site facilities and provide service on its tribal land.

See 47 C.F.R. § 1.2110(f)(3)(ii)(A)(1)-(3).

¹¹ *See* “Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands,” *Public Notice*, 15 FCC Rcd 24838, 24839 (2000).

EXHIBIT Y: TRIBAL LANDS WAIVER REQUESTS

Request for an additional bidding credit: If the applicant is seeking a credit in excess of the amount calculated according to Section 1.2110(f)(3), the applicant must submit a waiver request, pursuant to Section 1.925 of the Commission's Rules. *See* 47 C.F.R. § 1.925. These waiver requests are subject to the percentage cap on tribal lands bidding credits, and waivers will not be granted in excess of the applicable cap. This waiver request must demonstrate that the infrastructure costs exceed the amount of the standard bidding credit as calculated by ULS. The applicant will need to supply a detailed showing of the projected infrastructure costs, including a certification by an independent auditor that the estimated costs are reasonable. Each tribal land waiver request should be attached separately by selecting Attachment Type "Tribal Lands Waiver Requests" and entering "**Exhibit Y: Tribal Lands Waiver Requests**" in the Description Field on the Attachment Screen. In addition, the Description Field should indicate the market and tribal lands to which the waiver request pertains (e.g., Exhibit Y: Tribal Lands Waiver Requests ("DMA026, San Diego, Capitan Grande Reservation")).

EXHIBIT Z: APPLICANT CERTIFICATION

The applicant must attach a certification stating that it will comply with the buildout requirements set forth in § 1.2110(f)(3)(vi) of the Commission's Rules and that it will consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land. *See* 47 C.F.R. § 1.2110(f)(3)(ii)(B).

V. FCC FORM 602

A current FCC Form 602 must be on file with the Commission by the February 17, 2004 for the FCC Form 601. *See* 47 C.F.R. §§ 1.919, 1.2107(f). If an applicant already has an FCC Form 602 on file, and it is complete and accurate, it is not necessary to electronically file another FCC Form 602. *See* 47 C.F.R. § 1.919. Applicants are reminded that the FCC Form 602 must now be filed electronically.¹²

Electronic Filing

- 1.) Access the Ownership homepage, <http://wireless.fcc.gov/licensing/ownership/>, on the WTB website, or click the **Ownership** link listed under the console of orange buttons on the ULS homepage, <http://wireless.fcc.gov/uls>.
- 2.) From the Ownership page click the **Online Filing** button.
- 3.) On the next page, enter the FRN and password of the filer and select **Continue**. The Filer Information screen will appear. **Note:** If the Applicant listed on FCC Form 601 is listed as the filer on the ownership filing, provide the same FRN as provided on FCC Form 601.
- 4.) Complete the information on the Filer Information Screen; then click **Save**. The information entered for the Filer will be displayed on the Ownership Information page.
- 5.) Use the links on the far right of the Ownership Information page, as needed, to

¹² Beginning December 10, 2002, electronic filing of FCC Form 602 via ULS became mandatory. *See* "Wireless Telecommunications Bureau Reminds Filers of Effective Date for Mandatory Electronic Filing of FCC Form 602," *Public Notice*, 17 FCC Rcd 22934 (2002). For more information on FCC Form 602, *see also* "Wireless Telecommunications Bureau Announces Revised Version of FCC Form 602 is Now Available," *Public Notice*, 17 FCC Rcd 16197 (2002); "Wireless Telecommunications Bureau Answers Frequently Asked Questions Concerning Reporting of Ownership Information on FCC Form 602," *Public Notice*, 14 FCC Rcd 8261 (1999).

- Add an FCC Regulated Business of the Filer (corresponds to question 5 on the Main Form)
- Add a Disclosable Interest Holder (corresponds to questions 1-9 on Schedule A)
- Add an FCC Regulated Business of a Disclosable Interest Holder (corresponds to question 10 on Schedule A)

Repeat each of these steps as often as necessary.

6.) To submit the filing to the Commission, click the **Submit** button, which appears at the bottom of screens associated with the Filer of the Ownership Filing. When the filing is submitted successfully, a confirmation screen will display the filer's FRN and the submission date.

7.) From the Confirmation Page, select **Print Preview** to print a hard-copy version of FCC Form 602. (The Print Preview may also be used to upload the filing as Exhibit A for FCC Form 601.)

8.) Once an Ownership Filing has been submitted, it can be updated as often as needed. Follow these steps:

- Log in to Ownership Filing with the FRN and password of the filer.
- On the Ownership Data screen, select the **Update** button to the right of the filing.
- Update necessary information, and then click the **Submit** button, which appears at the bottom of appropriate Ownership Filing screens. When the filing is submitted successfully, a confirmation screen will display the filer's FRN and the date of submission.

Note: For additional information regarding electronic filing of ownership information, use the **Help** button, located on the top right of any screen within Ownership Filing.