



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

DA 05-1048  
April 13, 2005

## LOW POWER TELEVISION AUCTION NO. 81 SCHEDULED FOR SEPTEMBER 14, 2005

### AUCTION INVENTORY REVISED

### APPLICANTS PROPOSING “NON-COMMERCIAL EDUCATIONAL BROADCAST STATION” MUST RESPOND BY MAY 13, 2005

#### Report No. AUC-05-81-D

In this Public Notice, the Wireless Telecommunications Bureau and Media Bureau set forth a revised list of construction permits for certain low power television (LPTV), television translator and Class A television broadcast stations available for auction in Auction No. 81.

**Revised Inventory.** Attachment A to this Public Notice corrects and replaces the list of available construction permits released as Attachment A in the *Auction No. 81 Comment Public Notice*.<sup>1</sup> Participation in this auction will be limited to those applicants and mutually-exclusive (MX) engineering proposals identified in the revised Attachment A of this Public Notice. Qualifying applicants will be eligible to bid only on those construction permits for which the applicant's engineering proposal is specified in the particular MX group as set forth in this revised Attachment A.

**Dismissal of Engineering Proposals For Failure to Submit FRN.** Attachment B of this Public Notice lists engineering proposals that will **no longer** be included in Auction No. 81 as a result of the applicant's failure to submit the requested FCC Registration Number (FRN).<sup>2</sup> The *Auction No. 81 Comment Public Notice* warned all applicants that failure to provide the Commission with an FRN as prescribed in that public notice would result in the dismissal of its engineering proposal(s) and disqualification from participation in the auction.<sup>3</sup> The engineering proposals which are listed in Attachment B are hereby

<sup>1</sup> See Low Power Television Auction No. 81 Scheduled for September 14, 2005, Auction No. 81 Applicants Must Provide Supplemental Information by March 18, 2005, Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, DA 05-506 (rel. Feb. 28, 2005), 70 Fed.Reg. 11975 (Mar. 10, 2005) (“*Auction No. 81 Comment Public Notice*”).

<sup>2</sup> See Applicants for Low Power Television Construction Permits to be Awarded in Auction No. 81 Must Submit Supplemental Information by March 18, 2005, *Public Notice*, DA 05-505 (rel. Feb. 28, 2005), 70 Fed.Reg. 11974 (Mar. 10, 2005) (“*Auction No. 81 Supplemental Public Notice*”).

<sup>3</sup> See *Auction No. 81 Comment Public Notice*, 70 Fed.Reg. at 11975; see also *Auction No. 81 Supplemental Public Notice*, 70 Fed.Reg. at 11974. The latter public notice explained that “[u]se of an FRN is mandatory for all applicants for Auction No. 81 so that they may log on to the FCC Auctions 175 Application & Search system and continue to participate in the auction process.” *Id.*

dismissed for failure to submit an FRN.<sup>4</sup> Due to these dismissals, some engineering proposals became singletons and were removed from Attachment A. The engineering proposals that became singletons for this reason are included in Attachment C. Such singleton applicants will be notified at a later time and provided with an opportunity to submit a long-form application.<sup>5</sup> The removal of engineering proposals in some cases has resulted in the removal of entire mutually exclusive groups (“MX groups”) from the auction inventory.

**Removal of Engineering Proposals for Other Reasons.** Certain engineering proposals were removed from the inventory for Auction No. 81 for other reasons. Attachment C of this Public Notice lists engineering proposals that have been removed from Attachment A and not included in Attachment B. Attachment C provides a brief description of the reason for each removal from Auction No. 81. Listed below are the various reasons for these removals:

**Daisy Chains:** National Translator Association (NTA) requested that we reexamine certain MX groups to determine if they were “daisy chains” and should not be included in this auction.<sup>6</sup> Upon reexamination, we have determined that some of the MX groups identified by NTA consisted of daisy chained engineering proposals.<sup>7</sup> All daisy chains have been removed from the inventory for Auction No. 81 and will be included in a future auction. These MX groups were removed from Attachment A and now are included in Attachment C. Some of the other MX groups described by NTA as daisy chains were removed from Attachment A for different reasons.<sup>8</sup> After further examination, we confirm that the remaining MX groups cited by NTA were not in fact daisy chains. Those MX groups remain in Auction No. 81.<sup>9</sup>

**Groups/Engineering Proposals Removed Due to Settlement or Engineering Submission:** A number of applicants submitted requests to correct MX groups in Attachment A by removing specific groups

---

<sup>4</sup> This dismissal action is taken pursuant to authority delegated in 47 C.F.R. §§ 0.283 and 0.331.

<sup>5</sup> An engineering proposal that is not mutually-exclusive with any other engineering proposal is sometimes called a singleton.

<sup>6</sup> NTA described the following MX groups as daisy chains: MX018, MX031, MX032, MX035, MX038, MX042, MX043, MX045, MX047, MX048, MX054, MX057, MX065, MX066, MX067, MX068, MX069, MX070, MX083, MX088, MX090, MX101, MX104, MX105, MX115, MX116, MX121, MX123, MX130, MX131, MX139, MX143, MX144, MX146, MX152, MX164, MX180, MX183, MX205, MX238, and MX247. MX groups with a “daisy chain” of mutual exclusivity are not proceeding to auction at this time, and therefore daisy chain MX groups have been removed from Attachment A. A “daisy chain” occurs when two or more non-table, site-based applications propose service areas that do not directly overlap, but are linked together into a chain by the overlapping proposal(s) of other(s). A separate auction of construction permits for the “daisy chain” MX groups will be announced at a later date.

<sup>7</sup> We determined that the following MX groups were daisy chains: MX009, MX031, MX035, MX038, MX045, MX054, MX090, MX116, MX123, MX143, and MX152. Although MX038 was removed from this auction as a daisy chain, we note that, after examination of Commission records and analysis of the engineering proposals involved, the engineering proposal for channel 11 at Wichita Falls, Texas of Jackalope Broadcasters (File No. BNPTTL-2000816AAI) will be included in MX038 in a future auction, as requested by NTA. This engineering proposal is listed also in Attachment C.

<sup>8</sup> The following MX groups described as daisy chains by NTA were removed from Attachment A for the reasons specified in Attachment C: MX018, MX032, MX043, MX057, MX065, MX068, MX069, MX070, MX088, MX121, MX130, MX139, MX146, MX164, MX183, and MX205.

<sup>9</sup> Without exception, one or more engineering proposals were removed from the remaining MX groups described by NTA as daisy chains. The remaining MX groups described as daisy chains by NTA were: MX042, MX047, MX048, MX066, MX067, MX083, MX101, MX104, MX105, MX115, MX131, MX144, MX180, MX238, and MX247.

and/or engineering proposals from the auction.<sup>10</sup> These parties claim that they submitted, during one of the settlement windows that were afforded in this auction, a settlement and/or engineering amendment which rendered specified engineering proposals to be non-mutually exclusive. For example, some applicants submitted statements that that applicant agreed to accept interference from other authorized or proposed stations. They included documentation to support their claims. We have reviewed the documentation and Commission records, and we confirm that these documents were in fact timely-filed. We are removing these groups and engineering proposals from the auction. These groups and engineering proposals are included in Attachment C. In some instances, the removal of certain engineering proposals from a particular MX group rendered one remaining engineering proposal a singleton. These singletons also are included in Attachment C. In addition, after further review, we concur with applicants that certain MX groups contained engineering proposals previously identified by the Commission as singletons.<sup>11</sup> Given that prior determination, we have removed these engineering proposals from Auction No. 81. *See* Attachment C.

**Retention of MX056 in Auction:** In response to the *Auction No. 81 Comment Public Notice*, the State Board of Education, State of Idaho (“State”) requests that MX group 056 be removed from the auction. The State notes that it is the licensee of television translator station K55HZ, and that it was granted a displacement construction permit to operate on Channel 51 at Lewiston, Idaho, File No. BPTT-20030620AAO, on April 14, 2004.<sup>12</sup> The State notes that all three of the engineering proposals in MX group 056 are for Channel 51 at Lewiston, Idaho.<sup>13</sup> The State maintains that the operations proposed in these engineering proposals would cause substantial prohibited interference to its authorized Lewiston facilities. The State argues that MX group 056 should be removed from Auction No. 81.

The engineering proposals included with the short-form applications (FCC Form 175) submitted in the Auction No. 81 filing window were submitted for the purpose of determining mutual exclusivity. We will not examine the technical merits of the engineering information included with the engineering submissions prior to the auction.<sup>14</sup> After the conclusion of the auction, the winning bidder from MX

---

<sup>10</sup> Requests for correction were submitted by or on behalf of the following individuals or entities: Amanda Orrick, Avelino and Cathy Moreira, Carbon County, Charles C. Townsend III, Cooperative Television Association of Southern Minnesota, Core Group International, Inc., Darold K. Smith, David R. Bates, Federated Rural Electric Association, Harold W. Tegtmeier, Iglesia Jesuchristo Es Mi Refugio, Inc., Iron County, Joseph R. Liska, Julie Mintz, Julie St. Clair, Laurie Mintz, Mark Silberman, Meyer H. Feldman, National Translator Association, Prism Broadcasting, Region 1 Translators Association, Robert A. Naismith, Robert Reynolds, San Juan County, Summit County, SW Colorado Translator Association, Three Angels Broadcasting Network, Inc., Troy Tumm, West Central Minnesota Educational Television Company, and William Germano.

<sup>11</sup> *See, e.g.*, Low Power Television Auction No. 81 Non-Mutually Exclusive Proposals, *Public Notice*, 16 FCC Rcd 3128 (Video Serv. Div. 2001), 66 Fed.Reg. 12511 (Feb. 27, 2001).

<sup>12</sup> The State's application did not need to be included in competitive bidding because applications for displacement facilities have processing priority over other applications for new low power television or television translator facilities. *See* 47 C.F.R. § 73.3572(a)(4)(ii).

<sup>13</sup> The engineering proposals for MX056 were reduced from three to two due to the failure of esi BROADCASTING CORPORATION to submit an FRN. *See* Attachment B.

<sup>14</sup> The Commission stated in the *Broadcast Competitive Bidding Report and Order* that,

to the extent engineering information is required to be submitted with short-forms for certain broadcast services, such information is required only for the staff to utilize in making mutual exclusivity determinations for auction purposes. A comprehensive review of any applicant's technical proposal will be undertaken by the staff only post-auction, and an applicant who becomes a winning bidder will be able to make changes to its technical proposal at that time.

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, 15976 n.159 (1998) (*Broadcast Competitive Bidding Report and Order*).

group 056, if any, will be required to submit a long-form application (FCC Form 356) and demonstrate *inter alia* compliance with the Commission's technical rules. As part of its long-form review, the staff will determine whether the winning bidder's proposed facility would cause "substantial prohibited interference" to the State's authorized facility. For this reason, we decline to remove MX056 from Auction No. 81.

This public notice has four attachments as described below.

**Attachment A:** Revised list of engineering proposals for MX groups to be auctioned in Auction No. 81.

**Attachment B:** List of engineering proposals dismissed due to failure to submit FRN.

**Attachment C:** List of engineering proposals removed from Attachment A for reasons other than a failure to submit an FRN.

**Attachment D:** List of MX groups removed from Auction No. 81.

In addition to addressing various revisions to Attachment A and providing new attachments, in this Public Notice we address separately a statutory provision applicable to certain broadcast competitive bidders.

**Bidders Claiming Status Under Section 309(j)(2) Exemption for "Noncommercial Educational Broadcast Stations" Must Respond by May 13, 2005.** Section 309(j)(2)(C) of the Communications Act (the Act) exempts from competitive bidding applications for construction permits for noncommercial educational broadcast stations ("NCE stations").<sup>15</sup> For purposes of this auction, this exemption applies to a proposal for a new LPTV, television translator or Class A television broadcast station that "is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes."<sup>16</sup> In the *NCE Second Report and Order*, the Commission held that LPTV and television translator facilities qualify as NCE stations under section 397(6)(B) of the Act, only if they are owned and operated by municipalities and transmit only NCE programs.<sup>17</sup> Applications for such NCE stations are exempt from auction.

The Commission also stated that proposals for NCE stations may be submitted for non-reserved spectrum in a filing window, subject to being returned as unacceptable for filing if there is any mutually exclusive application for a commercial station.<sup>18</sup> Accordingly, we will provide applicants in Auction No. 81 with an opportunity to designate their status as an NCE station applicant under the definition set forth in section 397(6)(B) of the Act. **Applicants must understand that if they make such a claim and one or more of the NCE applicant's engineering proposals is determined to be mutually exclusive with one or more engineering proposals filed by an applicant for a commercial station, the NCE station engineering proposal(s) will be returned as unacceptable for filing.**

To claim status as an NCE applicant, an applicant for Auction No. 81 must submit an amendment to its short-form application (FCC Form 175) in the form of a written statement filed in an e-mail sent to [auktion81@fcc.gov](mailto:auktion81@fcc.gov) or by facsimile to Kathryn Garland at (717) 338-2850. The written statement must declare the applicant's claim that it qualifies as a municipality under the definition set forth in Section

---

<sup>15</sup> See 47 U.S.C. §§ 309(j)(2)(C) and 397(6)(B).

<sup>16</sup> See 47 U.S.C. § 397(6)(B).

<sup>17</sup> See Reexamination of the Comparative Standards for Noncommercial Educational Applicants, *Second Report and Order*, 18 FCC Rcd 6691, 6697 (2003) ("*NCE Second Report and Order*"); see also 47 C.F.R. § 73.5002(b).

<sup>18</sup> *NCE Second Report and Order*, 18 FCC Rcd at 6699.

397(6)(B) of the Act. Specifically, the applicant must state that it is (1) proposing to construct and operate a noncommercial educational station; (2) it is a municipality, and (3) it intends to transmit only noncommercial programs for educational purposes. Applicants seeking designation as an NCE station applicant **must submit** this specified information to the Commission **no later than May 13, 2005**.

For further information concerning the Auction No. 81 inventory or NCE station applicant status, contact Shaun Maher or Hossein Hashemzadeh, Video Division, at (202) 418-1600; for questions concerning auction processes and procedures, contact Lynne Milne, Auctions and Spectrum Access Division, at (202) 418-0660.

- FCC -