



# PUBLIC NOTICE

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## AUCTION OF LOW POWER TELEVISION CONSTRUCTION PERMITS

### 44 Bidders Qualified to Participate in Auction No. 81

#### Report No. AUC-05-81-G (Auction No. 81)

In this public notice, the Media Bureau (“MB”) and the Wireless Telecommunications Bureau (“WTB”) (collectively the “Bureaus”) identify 44 applicants found to be qualified to bid in the upcoming auction of 113 construction permits for certain low power television (LPTV), television translator and Class A television broadcast stations (Auction No. 81).<sup>1</sup> Bidding in Auction No. 81 is scheduled to begin on Wednesday, September 14, 2005. In addition, this public notice contains bidding instructions and other important information regarding Auction No. 81.

**Attachment A** lists each of the 44 qualified bidders, their upfront payments, and their maximum eligibility in bidding units.

**Attachment B** indicates the mutually exclusive (MX) groups for each qualified bidder. The new entrant bidding credit for qualified bidders for each MX group is indicated as 35 percent or 25 percent.<sup>2</sup>

**Attachment C** lists each applicant that submitted a short-form application (FCC Form 175) and was listed in the *Auction No. 81 Status Public Notice*<sup>3</sup> but did not qualify to bid in this auction. Each applicant listed in Attachment C did not qualify to bid due to the applicant’s failure to submit the required upfront payment. These applicants are reminded that they remain subject to the Federal Communication Commission’s rules prohibiting collusion in Commission auctions.<sup>4</sup>

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<sup>1</sup> There are 113 construction permits in Auction No. 81, but bids may be submitted for only 108 of them due to the failure by some applicants to submit upfront payments. Accordingly, Attachment B and Attachment D list only the 108 mutually exclusive (MX) groups that may receive bids. No bidders are eligible to bid on the following MX groups: MX034, MX048, MX198, MX213, and MX238.

<sup>2</sup> The new entrant bidding credit is not available to an applicant if it, and/or any individual or entity with an attributable interest in the applicant, have an attributable interest in any existing media of mass communications in the “same area” as the proposed broadcast facility. 47 C.F.R. § 73.5007(b). See 47 C.F.R. § 73.5007(b)(1)-(2) for the specific service definitions of “same area.”

<sup>3</sup> “Auction of Low Power Television Construction Permits, Status of FCC Form 175 Applications to Participate in Auction No. 81,” *Public Notice*, DA 05-2229 (MB and WTB 2005) (“*Auction No. 81 Status Public Notice*”).

<sup>4</sup> See 47 C.F.R. § 1.2105(c); *infra*, pp. 6-8.

**Attachment D** lists each MX group in the auction and the bidders that are qualified to bid in each MX group.

In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules, procedures, and other information contained in the *Auction No. 81 Procedures Public Notice*<sup>5</sup> and subsequent public notices. These public notices and other documents related to Auction No. 81 are available on the Commission's auctions website at <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

**Registration.** Qualified bidders have been automatically registered for the auction. Registration materials will be sent to the bidder's contact person at the contact address identified in the bidder's short-form application. Upon receipt, each bidder should be in possession of the following:

- At least two SecurID cards
- Integrated Spectrum Auction System (ISAS) Bidder's Guide
- FCC Auction Bidder Line telephone number

**Qualified bidders are solely responsible for ensuring the security of their computer systems and their registration materials and for ensuring that only authorized bidders place bids on their behalf. The Commission assumes no responsibility or liability for these matters.**

**WARNING: Any unauthorized entity accessing or tampering with an FCC or other government computer will be prosecuted to the full extent of the law.**

Any qualified bidder listed in Attachment A of this public notice that has not received the registration mailing **by 12:00 p.m. Eastern Time (ET) on Thursday, September 8, 2005**, must contact the Auctions Hotline directly at (717) 338-2888. Receipt of the registration mailing is critical to participating in both the mock auction and the actual auction, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

**Registration Material Replacement.** In the event that a bidder's SecurID cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

**Bidding.** When two or more engineering proposals are accepted for filing within an MX group, mutual exclusivity exists for auction purposes.<sup>6</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant with an engineering proposal within an MX group becomes a qualified bidder, or if only

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<sup>5</sup> *Auction No. 81 Procedures Public Notice*, 20 FCC Rcd at 9481.

<sup>6</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, 13 FCC Rcd 15920, 15978-80 ¶¶ 149-154 (1998) (“*Broadcast First Report and Order*”). See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 2348, 2376 ¶ 165 (1994).

one applicant submitted both of the only two engineering proposals within an MX group, that applicant is required to submit a bid in order to obtain the construction permit.<sup>7</sup>

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. The Integrated Spectrum Auction System (“ISAS” or “FCC Auction System”) can be accessed at <http://auctions.fcc.gov>. Alternatively, you also may use <http://auctions2.fcc.gov>.

Qualified bidders are permitted to bid telephonically or electronically. In either case, **each authorized bidder** must have his or her own RSA SecurID card, which the FCC will provide at no charge. Applicants with only one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the instructions for using them are only mailed to the contact person at the contact address listed on the applicant’s short-form application. Please note that each SecurID card is tailored to a specific auction. SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 81. The Auction Bidder Line telephone number will be supplied with the registration material.

Please note that the SecurID cards can be recycled, and we strongly encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction closes.

**Bidding Contingency Plan.** Bidders should develop comprehensive contingency plans that can be quickly implemented if bidders experience difficulty participating in the auction. While the FCC will correct any problems within Commission-controlled facilities, bidders are solely responsible for anticipating and overcoming problems such as bidder technical failures, telephone service interruptions, adverse local weather conditions, unavailability of authorized bidders, or the loss or breach of confidential security codes.

In their registration materials, all qualified bidders will be supplied with a telephone number for the Auction Bidder Line. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Electronic bidders may use this telephone number as an alternate method of bidding in the event they are unable to submit their bids electronically. **Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.**<sup>8</sup>

**Minimum Opening Bid Amounts.** There will be a minimum opening bid amount for each construction permit in Auction No. 81, calculated in accordance with the type of service and class of facility offered, market size, population covered by the proposed LPTV, television translator or Class A television broadcast facility, industry cash flow data, and recent broadcast transactions.<sup>9</sup> The minimum opening bid amount is subject to reduction at the discretion of the Commission. The Commission will not entertain requests to lower minimum opening bid amounts. The agency will exercise its discretion, if at all, independent of any communications from bidders.

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<sup>7</sup> Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its place in the MX group but, having purchased no bidding eligibility, will not be eligible to bid.

<sup>8</sup> The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes.

<sup>9</sup> *Auction No. 81 Procedures Public Notice*, 20 FCC Rcd at 9507-08. Attachment A of the *Auction No. 81 Procedures Public Notice* sets forth the minimum opening bid amounts for each construction permit offered in Auction No. 81.

**Announcements.** The Commission will post pertinent auction information as announcements in the FCC Auction System. Bidders should routinely check for announcements each time they enter the FCC Auction System and should read this information carefully.

**Bidding Schedule.** On Wednesday, September 14, 2005, there will be two rounds of bidding as follows:

Bidding Round	10:00 a.m.	-	11:30 a.m. ET
Bidding Round	1:30 p.m.	-	3:00 p.m. ET

The bidding schedule for Thursday, September 15, 2005, and continuing until further notice, will be:

Bidding Round	10:00 a.m.	-	11:00 a.m. ET
Bidding Round	12:00 p.m.	-	1:00 p.m. ET
Bidding Round	2:00 p.m.	-	3:00 p.m. ET
Bidding Round	4:00 p.m.	-	5:00 p.m. ET

Round results will be available approximately 10 minutes after the close of each round. The Commission will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. All subsequent schedule changes will be made by announcement via the FCC Auction System during the course of the auction.

**Bidder Questions during the Auction.** FCC auction staff and technical support staff will be available during the auction to answer questions from authorized bidders. Bidders should identify themselves as a bidder with a time-sensitive auction question when calling. Help can be obtained through the following options:

FCC Auction Bidder Line (telephonic bidding, auction conduct questions)	Use Auction Bidder Line telephone number supplied in registration mailing
FCC Technical Support (all technical questions, software and hardware)	(877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY)
FCC Auctions and Spectrum Access Division (legal questions only)	(202) 418-0660
FCC Video Division (legal and service rule questions only)	(202) 418-1600

The FCC Auction System includes a function for bidders to submit suggestions to the FCC, but this is **not** an appropriate mechanism for asking questions that may need a timely response, such as questions about auction procedures or other issues. **Such questions should be asked via one of the above telephone options.**

**Monitoring Round Results.** The Integrated Spectrum Auction System (ISAS) Bidder's Guide (included in the registration material) provides instructions for reviewing and downloading round results.

**Amendments to FCC Form 175.** Applicants are responsible for maintaining the accuracy and completeness of information furnished in their short-form applications, including their attachments.<sup>10</sup> Applicants should amend their short-form applications within ten business days from the occurrence of a reportable change. Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit must be reported immediately. Applicants must modify 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 Spectrum Access Division, at the following address: [auction81@fcc.gov](mailto:auction81@fcc.gov). Questions about changes should be directed to Lynne Milne at (202) 418-0660.

As described in the Commission's rules, applicants may make only minor corrections to their FCC Form 175 applications (*e.g.*, changing an authorized bidder or a facsimile number).<sup>11</sup> Major modifications (*e.g.*, construction permit changes or changing control of the applicant) will not be accepted.<sup>12</sup> Bidders are reminded that any changes affecting eligibility for the new entrant bidding credit, insofar as it results in the diminishment or loss of the new entrant bidding credit claimed on the FCC Form 175 application, must be clearly stated in the bidder's amendment and in the summary letter referenced above. In such cases, the Commission will make appropriate adjustments in the new entrant bidding credit prior to the computation of any down and final payment amounts due.<sup>13</sup>

**Due Diligence.** Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities being offered in this auction. The Commission makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of competitive bidding in Auction No. 81 in order to determine the existence of pending administrative or judicial proceedings, pleadings, applications or authorizations that might affect their decisions regarding participation in the auction. Potential bidders also should review all underlying Commission orders. Participants in Auction No. 81 are strongly encouraged to continue such research during the auction. Additionally, potential bidders should perform technical analyses sufficient to assure them that, if they prevail in competitive bidding for a particular construction permit, they will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect the bidder's ability to bid on, otherwise acquire, or make use of construction permits (and subsequent licenses) available in Auction No. 81. For further details regarding due diligence, qualified bidders should refer to the *Auction No. 81 Procedures Public Notice* under Section I.B.3.<sup>14</sup>

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<sup>10</sup> See 47 C.F.R. § 1.65.

<sup>11</sup> See 47 C.F.R. § 1.2105(b).

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. §§ 73.5007 and 73.5008.

<sup>14</sup> *Auction No. 81 Procedures Public Notice*, 20 FCC Rcd at 9488-90.

**Mock Auction.** On Monday, September 12, 2005, the Bureaus will conduct a mock auction which will allow qualified bidders to familiarize themselves with the FCC Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureaus will conduct this auction over the Internet, but telephonic bidding will also be available. Qualified bidders that wish to place bids telephonically should use the telephone number supplied in the Auction No. 81 registration materials.

The mock auction can be accessed at: <http://auctiondemo.fcc.gov>. The mock auction will include all 113 Auction No. 81 construction permits and will follow the rules governing the actual auction. The mock auction will be identified as Mock Auction No. 81. The FCC Auction System will reflect the actual construction permits for each bidder. The FCC Auction System will also reflect the actual upfront payment submitted by the bidder, which will determine the initial (maximum) eligibility (as measured in bidding units). The mock auction will simulate the start of the auction, and each bidder will be required to be active on 80 percent of its current bidding eligibility. If a bidder does not meet this requirement, it will have a waiver automatically applied (if the bidder has any waivers available), or its current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly eliminating the bidder from further bidding in the auction.

Electronic bidders participating in the mock auction are advised to review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration material.

The mock auction bidding schedule for Monday, September 12, 2005, will be:

Round 1	10:00 a.m.	-	11:00 a.m. ET
Round 2	12:00 p.m.	-	12:30 p.m. ET
Round 3	1:30 p.m.	-	2:00 p.m. ET
Round 4	3:00 p.m.	-	3:15 p.m. ET
Round 5	4:00 p.m.	-	4:15 p.m. ET

**Prohibition of Collusion.** Applicants are reminded that Section 1.2105(c) and 73.5002(d) of the Commission's rules prohibit applicants for any of the same MX groups from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>15</sup> In addition, even if auction applicants are eligible to bid each on only one common MX group, they may not discuss with each other their bids or bidding strategies relating to any MX group on which either is eligible to bid. For Auction No. 81, this prohibition became effective at the short-form application filing deadline on August 4, 2000, and will end on the post-auction down payment deadline, which will be announced in a future public notice.<sup>16</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>17</sup> The prohibition continues until the down

<sup>15</sup> 47 C.F.R. § 1.2105(a)(2)(viii), 47 C.F.R. § 1.2105(c)(1), and 73.5002(d). See also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); *id.*, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

<sup>16</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>17</sup> See, e.g., *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule); *Northeast Communications of Wisconsin, LLC, Forfeiture Order*, 19 FCC Rcd 18635 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); Letter to Robert Pettit, Esq., from Margaret W. Wiener, 16 FCC Rcd 10080 (Auctions Div. 2000) (declining to exempt an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

payment deadline regardless of whether a winning bidder needs to make an additional payment by the down payment deadline. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” to include all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.<sup>18</sup> If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application and must not have continued negotiations or communications prohibited by the anti-collusion rule.<sup>19</sup>

Bidders competing for a construction permit in the same MX group must not communicate indirectly about bids or bidding strategy.<sup>20</sup> Accordingly, such bidders are encouraged not to use the same individual as an authorized bidder.<sup>21</sup> A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should take precautionary steps to prevent communication between authorized bidders.<sup>22</sup> However, the Bureau cautions that merely filing a certifying statement as part of the short-form application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>23</sup>

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 within 30 days of any substantial change that may be of decisional significance to that application.<sup>24</sup> Thus, Section 1.65 requires auction applicants that engage in a communication of bids or bidding strategies that results in a bidding agreement, arrangement, or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report any prohibited discussion or disclosure regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>25</sup>

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<sup>18</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>19</sup> See “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice*, 11 FCC Rcd 9645 (WTB 1995).

<sup>20</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

<sup>21</sup> See *Auction No. 81 Procedures Public Notice*, 20 FCC Rcd at 9488.

<sup>22</sup> See *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 ¶ 11 (1998).

<sup>23</sup> *Id.*, 13 FCC Rcd at 11978 ¶ 13.

<sup>24</sup> 47 C.F.R. § 1.65.

<sup>25</sup> 47 C.F.R. §§ 1.65, 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.<sup>26</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>27</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>28</sup>

**Submission of Auction No. 81-related Filings.** As noted above, applicants seeking to amend their short-form applications during the auction should make 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 Spectrum Access Division, at the following address: [auction81@fcc.gov](mailto:auction81@fcc.gov).

Parties wishing to submit requests, complaints, or other information concerning Auction No. 81 should also send a copy by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction81@fcc.gov](mailto:auction81@fcc.gov), in addition to following other procedures prescribed by the Commission's rules. The Commission occasionally receives complaints regarding certain bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after the winning bidders have submitted their long-form applications, when there is greater opportunity for investigation of such allegations, if warranted.

Finally, parties wishing to make suggestions concerning Auction No. 81 or future auctions are encouraged to present such ideas using the suggestion feature of the FCC Auction System. (As mentioned above, this feature is not an appropriate mechanism for posing questions that need a timely response.) Commission staff always takes suggestions into consideration, but may not provide an individualized response.

**Long-Form Applications.** Within thirty business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 346 or FCC Form 301-CA, as appropriate), including required exhibits, for each construction permit won through Auction No. 81.<sup>29</sup> The electronic submission of the long-form application must be accompanied by the applicable filing fee.<sup>30</sup> Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>31</sup> Further filing instructions will be provided to auction winners at the close of the auction.<sup>32</sup>

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<sup>26</sup> See 47 C.F.R. § 1.2107(d).

<sup>27</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>28</sup> See 47 C.F.R. § 1.2109(d).

<sup>29</sup> See 47 C.F.R. §§ 1.2107 and 73.5005. See also *Broadcast First Report and Order*, 13 FCC Rcd at 15984-85 ¶¶ 163-64.

<sup>30</sup> See *Broadcast First Report and Order*, 13 FCC Rcd at 15984 ¶ 164.

<sup>31</sup> See 47 C.F.R. §§ 1.2112(b), 73.5005, 73.5007 and 73.5008.

<sup>32</sup> See 47 C.F.R. §§ 1.2107, 1.2109(a), 73.3572, 73.5003, 73.5005, and 73.5006(d).



For additional information regarding this public notice, please contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

For general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2888

For legal questions: Lynne Milne at (202) 418-0660

Video Division, Media Bureau:

For legal and service rule questions: Shaun Maher or Hossein Hashemzadeh at (202) 418-1600

For technical questions about software or hardware, please contact FCC Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

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