

## ATTACHMENT D

### INSTRUCTIONS FOR COMPLETING FCC FORM 601 AND FCC FORM 602

***IMPORTANT: Beginning August 1, 2005, the online filing process changed for filing FCC Form 601, Application for Wireless Telecommunications Bureau Radio Service Authorization, including Schedule B for Geographically Licensed Services (the "Long Form"). Instructions for the new filing process are contained in this attachment.***

***In addition, most of the information provided on the FCC Form 175 (Short Form) will be pre-filled to the FCC Form 601 in the on-line filing process. This feature will remove the need for applicants to provide many of the exhibits currently required when filing a Long Form. The following information will be pre-filled from the FCC Form 175:***

- ***Designated Entity Information, including revenue and bidding credit percentage information***
- ***Collusion-Based Agreement Information, including Agreement Name and Parties to Agreements***

***Further, when the FCC Form 175 was submitted, a FCC Form 602 was filed in ULS. Thus, it should not be necessary to file a new FCC Form 602; however, applicants should ensure that the current FCC Form 602 is complete and accurate.***

#### **I. FCC FORM 601 GENERAL REQUIREMENTS**

***Applicants are strongly encouraged to use the format below to submit FCC Form 601 and exhibits to FCC 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 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 the Commission's 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 December 29, 2005**, 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). However, an applicant seeking tribal lands bidding credits in one or more, but not all markets, 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 **Log In** button in the Online Filing section from this page.

You may also connect to ULS Online Filing by establishing a direct dial-up connection. To establish a direct dial up connection, configure your dial-up network to dial **800-844-2784**. Then point your Web browser to <http://wireless.fcc.gov/uls> and select the **Log In** button in the Online Filing section.

**Note:** Connecting to the FCC Network requires *at a minimum* the following hardware: Pentium 133 CPU; 32 MB RAM; VGA monitor; 28.8 Kbps, Hayes-compatible modem; and a mouse or other pointing device. For both Internet and direct dial-up connections, you may use the following browser software to register and file FCC Form 601 through ULS: Internet Explorer (v.5.5 or later) and Netscape Communicator (v. 4.7x). You can download Netscape Communicator free of charge from the Netscape download site at <http://browser.netscape.com/ns8/download/archive47x.jsp/>. 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.

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

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), available at <http://wireless.fcc.gov/uls/releases/da012452.txt>. For assistance contact the FCC Support Center at (877) 480-3201, option four; TTY: (202) 414-1255. To provide quality service and ensure security, all telephone calls are recorded.

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

**# 63 – DV – Multichannel Video Distribution & Data Service (MVDDS)**

Click **Continue**.

5. Supply the information requested by FCC Form 601 and the Commission's Rules. Complete the questions on the pages as they appear, following the onscreen prompts and instructions. Use the buttons at the bottom of each page to continue to the next page or go back to the previous page. Provide attachments as instructed by clicking the Attachments link at the top of the page. Attachment requirements are described in Section III of this document. Be sure to use the standard attachment types and file descriptions set forth herein.
6. If you plan to file a request for a waiver or exception to the Commission's Rules, select "Yes" for the appropriate question on the Application Information page.

7. On the Markets page, the system pre-fills the Markets Summary table with data for the licenses this applicant has won in the selected auction. The Include In Application column contains a checkbox for each license, where a check indicates that you want to include the license in this application. Initially, all checkboxes are selected. To unselect a license, clear its checkbox. The checkbox lets you apply for the winning licenses in stages, rather than all at once. Click **Continue**.
8. The next page is Tribal Lands Bidding Credit. If you are applying for markets in which you intend to seek tribal lands bidding credits, see Section IV of this Attachment.
9. Agreement information that was provided on the FCC Form 175 will be pre-filled into the FCC Form 601. This agreement information is editable. You can edit the agreement name, agreement type and parties to the agreement. You can also delete and add agreements. In addition, if the applicant has entered into any agreements that could impact its Designated Entity status, you must answer "Yes" on the Agreement Information page, add these agreements to the FCC Form 601 and attach an exhibit that summarizes the agreement. Refer to the guidelines below for Exhibit D: Agreements & Other Instruments.
10. For applicants seeking a bidding credit, revenue Information for the Applicant, Disclosable Interest Holder(s) and Affiliate(s) will be pre-filled from the FCC Form 175 into the FCC Form 601 as read-only information. If changes or additional information need to be added, please provide them as attachment(s). Refer to the guidelines below for Exhibit C: Designated Entities.
11. Continue completing the questions on the pages as they appear, following the onscreen prompts and instructions until you reach the Summary page. Use the view and edit capabilities to review your application to confirm that it is complete and accurate. Correct information as necessary. Once you are confident that the application is ready for certification and submission, click on the **Continue to Certify** button.
12. The Certification page provides General Certification Statements. By "signing" this form, the applicant certifies that the statements listed in this section are true, complete, correct, and made in good faith. To submit the application to the FCC, click the **Submit Application** button.
13. You will receive a Confirmation page when you press the **Submit Application** button. Note the file number for your records. You may print the Confirmation page by choosing the Print option from the File menu of your Web browser. You may also choose to print a copy of the complete application you have just submitted by selecting the Reference Copy link. You may use the **Log Out** link at the top left of the page to exit ULS online filing.

### **Updating an Application**

You may access your application to make changes until the December 29, 2005, filing deadline:

- 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. Click the link next to your saved application. On the next page, "Application At A Glance," choose the **Continue** link under the "Work on This Application" menu. Saved applications for an auctionable service must be completed within the 10-day filing window.
- Once you click the **Submit Application** 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 Application** button 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.

Commission rules contain limitations on filing of major amendments after the December 29, 2005, deadline that may affect the applicant's legal rights.<sup>1</sup> Acceptance of an amendment by ULS does not indicate that the amendment is allowed under the Commission’s rules. Applicants are advised to consult Commission’s rules in this regard prior to filing an amendment. Once the Commission has granted a request for a license, you may request a modification.

*Basic Guidelines for Filing FCC Form 601 Online:*

- Some of the data entry fields on the online application form may be prefilled with information from the FCC 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 link 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, by clicking on **Save**, and complete it at a later date if necessary. 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 December 29, 2005.
- 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 filing the FCC Form 601, contact the ULS Technical Support Hotline at (877) 480-3201, option 2, or (717) 338-2824 (TTY). The ULS Technical Support Hotline is available Monday through Friday from 8 a.m. to 7 p.m. Eastern Time. There are no weekend hours and the hotline is closed on all Federal holidays. To provide quality service and ensure security, all telephone calls are recorded.

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<sup>1</sup> See 47 C.F.R. §§ 1.927, 1.2107(c).

### III. ORGANIZATION OF APPLICATION EXHIBITS

**FCC 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 select the Attachments link provided within the electronic filing software to connect to the Attachments page. Select the appropriate attachment type from the pull-down menu, enter the correct attachment description (listed below) in the text box provided, browse for your file, and select the **Add Attachment** link. The electronic filing software will accept many different types of computer files. For a full list of acceptable file formats, see <http://esupport.fcc.gov/attachments.htm#types>. Do not add password protection to attached files.

Provide exhibit attachments in ULS as applicable. Any exhibits to be attached to an application as a result of our rule requirements should be identified as follows:

Title

- Exhibit A: Ownership
- Exhibit B: Foreign Ownership
- Exhibit C: Designated Entities
- Exhibit D: Agreements & Other Instruments
- Exhibit E: Confidentiality Requests
- Exhibit F: Waiver Requests
- Exhibit G: Eligibility Restriction/Divestiture
- Exhibit H: Miscellaneous Information
- Exhibit X: Tribal Government Certification<sup>2</sup>
- Exhibit Y: Tribal Lands Waiver Requests<sup>3</sup>
- Exhibit Z: Applicant Certification<sup>4</sup>

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. This requirement may be fulfilled by providing an attachment referencing the file number, date, and name of filer of the appropriate FCC Form 602 application. For information regarding the filing of the FCC Form 602, see Section V of this attachment. To provide this information, applicants should upload the file, select Attachment Type “Ownership,” and enter “**Exhibit A: Ownership**” in the File Description field on the Attachments page.

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<sup>2</sup> 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*”).

<sup>3</sup> *See id.*

<sup>4</sup> *See id.*

Although ownership information can be provided by referencing the FCC Form 602, applicants should confirm that their FCC Form 602 accurately reflects all information discussed below and as required under Section 1.2112 of the Commission's rules.

**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)(2).
- 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)(4).
- 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)(3).
- 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)(5).

**Indirect Ownership:** Applicants must identify all parties holding a 10 percent or greater indirect ownership interest in the applicant, as determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain. 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)(6).

**Other Disclosable Interests and Entities:** Applicants must list any Commission-licensed entity or applicant for a Commission 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 ownership interest, whether voting or 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)(7).

## **EXHIBIT B: FOREIGN OWNERSHIP**

If the applicant has responded "Yes" to Question 48a) and "No" to Question 48b) on the FCC Form 601, it must attach to the application a date-stamped copy of a request for a foreign ownership ruling pursuant to Section 310(b)(4) of the Communications Act. To provide this information, the applicant should select Attachment Type "Ownership" and enter "**Exhibit B: Foreign Ownership**" in the Description field on the Attachments page. 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*,<sup>5</sup> 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.<sup>6</sup>

*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.<sup>7</sup> In keeping with this pre-approval process, auction applicants are required to certify in their FCC Form 175 applications either that they 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.<sup>8</sup> 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 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**

If changes or additional information need to be added regarding the revenue information for the Applicant, Disclosable Interest Holder(s) and Affiliate(s) that will be pre-filled from the FCC Form 175 into the FCC Form 601, please provide them by uploading a file, selecting Attachment Type “Ownership”

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<sup>5</sup> 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).

<sup>6</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23891, 23935-42, 23946, ¶¶ 97-118, 131 (1997).

<sup>7</sup> *Id.*

<sup>8</sup> See 47 C.F.R. § 1.2105(a)(2)(v), (vi).

and entering “**Exhibit C: Designated Entities**” in the Description field on the Attachments page. Although this information is pre-filled from the FCC Form 175, applicants should confirm that the designated entity information is correct. In determining whether the designated entity information is correct please refer to the guidelines below.

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, and an entrepreneur in the MVDDS auction (Auction No. 63). *See* 47 C.F.R. § 101.1429(a).<sup>9</sup>

**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 had 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 had 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 had 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 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 1.2110(b)(3)(i):** Where an applicant (or licensee) is a consortium of small businesses, very small businesses, or entrepreneurs, as those terms are defined in the service-specific rules, the gross revenues of each consortium member shall not be aggregated. Each consortium member must constitute a separate and distinct legal entity to qualify. *See* 47 C.F.R. § 1.2110(b)(3)(i).<sup>10</sup>

**For Very Small Businesses, Small Businesses, and Entrepreneurs:** For purposes of determining whether an applicant 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

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<sup>9</sup> *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*”).

<sup>10</sup> *See also* Amendment of Part 1 of the Commission’s Rules - Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order On Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003).



considered on a cumulative basis and aggregated. *See* 47 C.F.R. §§ 1.2110(b)(1), 1.2112(b)(2). In accordance with Section 1.2110(n) of the Commission's rules, 47 C.F.R. § 1.2110(n), provide 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)(v); *see also* 47 C.F.R. § 1.2110(b)(1)(i). 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 the 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)(i), 1.2112(b)(2)(v).

**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 Section 1.2110(b)(3)(i) and 101.1429(a) of the Commission's rules, 47 C.F.R. §§ 1.2110(b)(3)(i), 101.1429(a), 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 the individual very small businesses, small businesses or entrepreneurs in the consortium shall not be aggregated. *See* 47 C.F.R. § 1.2110(b)(3)(i).

#### **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).
- An entity that 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).
- A licensee or its affiliate that 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).

#### **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).

Note: This information is collected in ULS and does not need to be included in an attachment.

## EXHIBIT D: AGREEMENTS & OTHER INSTRUMENTS

*Collusion-Based Agreements:* 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). Note: A list of the agreements disclosed on the FCC Form 175 will be pre-filled on the Form 601, but should be updated if necessary.

*Designated Entity-Based Agreements:* 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 very small, small business, entrepreneur or a consortium of very small businesses, small businesses or entrepreneurs, including the establishment of *de facto* and *de jure* control. *See* 47 C.F.R. § 1.2112(b)(2)(iii). 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)(iii). 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)(iv). Note: Applicants need to list these agreements, along with the applicable parties to each of these agreements, in the FCC Form 601. The list of these agreements will appear on the FCC Form 601, along with the collusion-based agreements pre-filled from the FCC Form 175.

To comply with these requirements, all agreements must be listed on the FCC Form 601 and applicants must provide a summary of these agreements. Applicants, however, may submit the agreements themselves, instead of providing a detailed summary of the 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 Attachments page. 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 is necessary to determine the applicants' qualifications to be a Commission licensee 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. (Applicants submitting confidentiality requests should be aware that section 0.459 was 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 Attachments page.

**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 an applicant wishes to file a request for waiver of a Commission rule, *see* 47 C.F.R. § 1.925, 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 Attachments page.

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(g)(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)).<sup>11</sup>

#### **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 Attachments page.

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<sup>11</sup> If no such certification or application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may cancel or rescind the license automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate. *See* 47 C.F.R. § 101.1412(g)(6).

#### IV. INSTRUCTIONS FOR APPLICANTS SEEKING TRIBAL LAND BIDDING CREDITS

**Filing the Long-Form Application:** Applicants interested in receiving a tribal land bidding credit must apply to do so when initially filing the long-form application in ULS (See section II, “Filing Form 601 Electronically”).

1. Select “Yes” on the Tribal Lands Bidding Credits page.
2. On the Seek Tribal Lands Bidding Credits page, indicate each channel block for which credit is sought by selecting the appropriate box. *See* 47 C.F.R. §§ 1.2107(e), 1.2110(f)(3).

All winning bidders, including those winning bidders that apply for a tribal land bidding credit, must pay the full amount of the Final Balance Due shown in Attachment B by the 6:00 p.m. ET January 13, 2006, deadline (or no later than 6:00 p.m. ET on January 30, 2006, along with the five percent late fee required by Section 1.2109(a) of the Commission’s rules).<sup>12</sup> If an applicant’s request for a tribal land bidding credit is approved, the Commission will deduct the amount of the tribal land bidding credit from the eligible applicant’s auction payments on deposit (including the final payment), and that amount will be refunded to the payer of record as identified on FCC Form 159.

You may provide certification when initially filing the Long-Form application or, after the filing window, you may re-enter ULS and update your long-form application to provide the certification. (See the instructions, “Updating the Long Form Application” below.) For a list of the tribal lands in each MVDDS Service Area, go to the Auction Website at <http://wireless.fcc.gov/auctions> and click on “Tribal Land Credits,” then click on “Cross References.” Additional information regarding Tribal Lands Bidding Credits is available at the above referenced website. For additional information on the tribal lands bidding credit, applicants should review the Commission’s rule-making proceeding regarding tribal lands bidding credits and related public notices.<sup>13</sup>

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. *See* 47 C.F.R. § 1.2110(f)(3)(ii). Within this 180-day period, applicants must amend their application to provide the requisite tribal information and provide the applicant certification.<sup>14</sup> Applicants seeking a tribal lands bidding credit for some, but not all, markets in which they were the winning bidder are encouraged to submit two applications. One

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<sup>12</sup> 47 C.F.R. § 1.2109(a).

<sup>13</sup> *See* In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Third Report and Order*, 19 FCC Rcd 17652 (2004) (“*Tribal Lands Third Report and Order*”); 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 (WTB 2003) (“*Tribal Lands Second Report and Order*”); 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 (WTB 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 (WTB 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 (WTB 2000) (“*Tribal Lands Public Notice*”); 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 (WTB 2000).

<sup>14</sup> The Commission, in the *Tribal Lands Second Report and Order*, extended the tribal lands certification period to 180 days. *See Tribal Lands Second Report and Order*, 18 FCC Rcd at 4778-9 ¶10. The new 180-day certification period became effective July 1, 2003. *See* 68 Fed. Reg. 23417 (May 2, 2003).

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 long form application during the filing window (before it has been submitted to the FCC), see “Updating an Application” in Section II above. To update a Form 601 application for tribal lands certification, after it has been officially received 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**.
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 access Form 601.
5. Proceed through the application pages using the **Continue** button at the bottom of each page until you reach the Tribal Lands Secured Certifications page. Answer “Yes” to the question on this page and provide an attachment using the Attachments link at the top of the page. For each market where a tribal lands bidding credit is being sought, the applicant must 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**.” Click **Continue**.
6. The next page, Select Tribal Lands, lists the names of the federally recognized tribal lands in each market for which you have requested a tribal lands bidding credit and the square kilometers of each tribal land within that market. Select the checkbox for each tribal land you want to include in your request, and then click **Calculate** to see the credit amount you may be granted. To add a new tribal land to this market, select **Add**.
7. The Tribal Lands Bidding Credit Summary page will display the calculated credit and additional credit requested for each channel block. Click **Continue**.
8. Proceed through the remainder of the application pages using the **Continue** button at the bottom of each page to the **Certification** page. Certify your application and select **Submit Application**.

You will receive a confirmation page. Note the file number for your records. You may use the link at the top left of the page to logout.

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).<sup>15</sup> 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.<sup>16</sup>

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 PDF file. 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 Attachments page. In addition, the Description Field should indicate the market and tribal lands to which the certification pertains (*e.g.*, “Exhibit X: Tribal Government Certification (MVD175, Rapid City, Standing Rock 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 penetration rate at or below eighty-five (85) percent;<sup>17</sup>
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).

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<sup>15</sup> Note that the bidding credit formula and limits were recently revised by the *Tribal Lands Third Report and Order*, 19 FCC Rcd 17652 (2004).

<sup>16</sup> *See Tribal Lands Public Notice*, 15 FCC Rcd at 24839.

<sup>17</sup> *See Tribal Lands Third Report and Order*, 19 FCC Rcd 17652 (2004) (raising the wireline penetration rate from 70% to 85% or less).

## 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 Attachments page. 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 ("MVD175, Rapid City, Standing Rock Reservation")).

## EXHIBIT Z: APPLICANT CERTIFICATION

The applicant must attach a certification stating that it will comply with the buildout requirements set forth in section 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 December 29, 2005, deadline for filing the FCC Form 601. *See* 47 C.F.R. §§ 1.919, 1.2107(f). When the applicant submitted the FCC Form 175, a current FCC Form 602 was filed in ULS. Thus, applicants already have an FCC Form 602 on file as a result of their submitted FCC Form 175 and, therefore it is not necessary to electronically file another FCC Form 602. However, applicants should review their FCC Form 602 to confirm that it is complete and accurate. *See* 47 C.F.R. §§ 1.919, 1.2112. Applicants are reminded that any updates to FCC Form 602 must be filed electronically.<sup>18</sup>

### Update Ownership Information through Electronic Filing

1. Access the ULS homepage, <http://wireless.fcc.gov/uls>, and click the **Log In** button in the Online Filing section.
2. On the next page, enter the FRN and password of the filer and select **Continue**. The ULS Online Systems page 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.
3. Click the My Ownership link in the left-hand Task menu.
4. On the Ownership Disclosure Filing page, select the Filer Name link of the filing you wish to update.

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<sup>18</sup> 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 (WTB 2002). For more information on FCC Form 602, *see* Wireless Telecommunications Bureau Announces Revised Version of FCC Form 602 is Now Available, *Public Notice*, 17 FCC Rcd 16197 (WTB 2002); Wireless Telecommunications Bureau Answers Frequently Asked Questions Concerning Reporting of Ownership Information on FCC Form 602, *Public Notice*, 14 FCC Rcd 8261 (WTB 1999).

5. On the Ownership Disclosure Filing page that appears, select the Update Filing link in the Work on this Filing menu.
6. The Work on this Filing menu will display several update options. This is your toolbox for performing action on your ownership filing. Use the links as needed, to:
  - View and Edit Filer Information
  - Upload Ownership Disclosure Information
  - Add a Disclosable Interest Holder of the Filer (corresponds to questions 1-9 on Schedule A)
  - Add an FCC Regulated Business of the Filer (corresponds to question 5 on the Main Form)
  - Add an FCC Regulated Business of a Disclosable Interest Holder (corresponds to question 10 on Schedule A)
  - Change the Filing Type
  - Certify the Filing
  - Change Cellular Cross Interest
7. Update necessary information, following the onscreen instructions and prompts. To complete your changes, select the **Certify Filing** button, which appears at the bottom of the appropriate Ownership Filing pages. When the filing is submitted successfully, a confirmation page will display the filer's FRN, the date of submission and a File Number for this filing.

ULS Ownership Filing displays this Confirmation page for your records. We strongly recommend you print a copy of this page. You may print the Confirmation page by choosing the Print option from the File menu of your Web browser. You may also choose to print a copy of the complete application you have just submitted by selecting the Reference Copy link. Your new ULS Ownership filing has been given a file number. Any future reference to this application must be made using the file number.

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