



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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

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LPTV AND TV TRANSLATOR DIGITAL COMPANION CHANNEL APPLICATIONS FILING WINDOW FOR AUCTION NO. 85

Auction Filing Window Rescheduled; Filing Requirements Regarding June 19-30, 2006 Window for LPTV and TV Translator Digital Companion Channel Applications

Report No. AUC-06-85-B (Auction No. 85)

On January 26, 2006, the Media Bureau ("MB") released a public notice announcing an intention to open a filing window for Low Power Television (LPTV) and TV Translator digital companion channel applications and a freeze on filing LPTV, TV Translator and Class A Television (TV) analog and digital minor change, analog and digital displacement and digital on-channel conversion applications.¹ By this Public Notice, the Media Bureau and Wireless Telecommunications Bureau ("WTB") (collectively the "Bureaus") announce that the filing window is rescheduled and will now be open from June 19 through June 30, 2006. This Public Notice also provides the specific procedures for the filing of short-form applications (FCC Forms 175) and associated technical data for Auction No. 85. Commencing at 9:00 a.m. Eastern Time (ET) on June 19, 2006 and continuing until 6:00 p.m. ET on June 30, 2006, the Commission will permit the filing of such digital companion channel applications. Applicants must electronically submit a short-form application as well as technical data from FCC Forms 346 or 301-CA to specify their proposed digital companion channel.

I. GENERAL INFORMATION

A. Background

In furtherance of the digital broadcast television (DTV) transition and to enable more viewers to realize the many benefits of DTV, the Commission established rules and policies to facilitate the digital transition for LPTV, TV translator and Class A TV stations.² In its *Report and Order*, the Commission

¹ See "Announcement of Filing Window for LPTV and TV Translator Digital Companion Channel Applications from May 1, 2006 through May 12, 2006; Freeze on Filing of Low Power Television, TV Translator and Class A Analog and Digital Minor Change, Analog and Digital Displacement and Digital On-Channel Conversion Applications from April 3, 2006 through May 12, 2006," *Public Notice*, DA 06-123 (January 26, 2006) ("*Auction No. 85 Announcement Public Notice*").

² See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Report and Order*, 19 FCC Rcd 19331 (2004) (*LPTV DTV Report and Order*). A copy of the *LPTV DTV Report and Order* may be found at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-220A1.pdf.

stated that its new rules and policies would “provide flexible and affordable opportunities for digital LPTV and TV translator service, both through the conversion of existing analog service and, where spectrum is available, new digital stations.”³ The new rules provide that existing permittees and licensees in these services be given the flexibility to choose one (and only one) of two methods to convert their existing analog stations to digital. Existing permittees and licensees in these services may either implement an on-channel digital conversion of their analog channel or they may seek a (second) digital companion channel that may be operated simultaneously with their analog channel. Permittees and licensees in these services are not guaranteed a digital companion channel and must identify a channel that can be operated consistent with the Commission’s interference protection rules.⁴ At a date to be determined in the future, the Commission will require that the permittee or licensee terminate analog operation, return one of their two channels to the Commission, and operate their station only in digital mode.⁵ **Permittees and licensees in these services may choose only one of these two methods for converting their existing analog stations to digital.**

B. Eligibility and Filing Restrictions

This is a “national” filing window, meaning that applications for digital companion channels may be filed for any location in the United States and its territories without geographic restrictions, subject to the Commission’s technical rules.⁶ In addition, applicants for digital companion channels will be required to identify their associated analog station. Digital companion channel applications will be treated as minor change applications and the protected contour of the proposed digital station must overlap the protected contour of the associated analog station.⁷ Once again, only existing LPTV, TV translator and Class A TV station permittees and licensees will be permitted to file for digital companion channels during this window.⁸

³ *LPTV DTV Report and Order*, 19 FCC Rcd at 19331.

⁴ *Id.*, 19 FCC Rcd at 19383 ¶ 153. An application for a digital companion channel will not be accepted if it fails to protect the authorized analog or digital facilities of a TV broadcast station or the authorized analog facility of TV translator, LPTV, Class A television stations, or 700 MHz public safety and commercial wireless licensees. See 47 C.F.R. §§ 74.703, 74.793. An application for a digital companion channel must also protect pending applications of TV translator and LPTV and Class A TV stations. *Id.*

⁵ *LPTV DTV Report and Order*, 19 FCC Rcd at 19383 ¶ 153.

⁶ See 47 C.F.R. §§ 74.703, 74.793.

⁷ See 47 C.F.R. § 74.787(4)(b)(1). The statement in the *Auction No. 85 Announcement Public Notice* that “[a]pplicants for digital companion channels . . . must propose to serve the community of license of their associated analog facility” was not intended to establish a specific level of service requirement for digital LPTV and translator facilities. See Letter to Hossein Hashemzadeh, Video Division Deputy Chief, from George R. Borsari, Jr., Counsel for The National Translator Association (dated Mar. 31, 2006) (seeking clarification of standards for LPTV and translators). The Commission has stated that the proposed digital LPTV or translator station must serve the community of license of the associated analog facility. See *LPTV DTV Report and Order*, 19 FCC Rcd at 19383 ¶ 153. This requirement was meant to ensure that the new digital companion facility continue to serve the same area as the existing analog facility. There is no requirement that the digital companion facility provide a certain level of service to the station’s community of license. Rather, as explained below, the protected contour of the proposed digital LPTV or translator station must overlap the protected contour of the associated analog station.

⁸ See 47 C.F.R. § 74.787(4)(b)(1).

Permittees and licensees seeking digital operation must choose between an on-channel digital conversion of their analog station or operating a digital companion LPTV or TV translator station.⁹ Any permittee or licensee that has a license, construction permit, or pending application for on-channel digital conversion will not be eligible to submit an application for a digital companion channel for the same station, and any such companion digital channel application will be dismissed.

Permittees and licensees filing in this window are eligible to apply for only a single digital companion channel for each existing analog channel.¹⁰ We remind permittees and licensees that they will be required at some point – to be determined in a future proceeding – to return one of their two companion channels to the Commission, either the analog or the digital channel.¹¹ We also remind Class A TV permittees and licensees that all digital companion channels will be licensed as LPTV channels on a secondary, non-interference basis.¹²

C. Application Freeze

In order to stabilize the LPTV database and ensure that interested parties are able to identify available channels for digital use, the Media Bureau announced that there will be a freeze on the filing of LPTV, TV translator and Class A analog and digital minor change, analog and digital displacement, and digital on-channel conversion applications starting on April 3, 2006 and continuing through May 12, 2006.¹³ Due to the change in the schedule for the filing window, this freeze will extend until June 30, 2006. Following the completion of the digital companion channel window on June 30, 2006, such minor change and displacement applications will once again be accepted. As an exception to this freeze, on-air operating stations demonstrating that they face imminent disruption of service may request special temporary authority where necessary to continue operations.¹⁴

D. Mutually Exclusive Engineering Proposals

Following the close of the digital companion application filing window, the Media Bureau staff will evaluate the filings and determine which of the engineering proposals are mutually exclusive and must be resolved through competitive bidding in an auction. In the *LPTV DTV Report and Order*, the Commission stated that it would provide a limited period after the filing of short-form applications in the digital companion channel filing window for applicants to utilize engineering solutions and settlements to resolve conflicts among their applications.¹⁵ The precise period for this settlement opportunity will be specified in a later public notice.¹⁶

⁹ See "FCC Commences Accepting Applications for On-Channel Digital Conversion of Low Power TV and TV Translator Stations and Announces Availability of Revised Application Forms 346 and 301-CA," *Public Notice*, DA 05-2546 (MB Oct. 4, 2005).

¹⁰ *LPTV DTV Report and Order*, 19 FCC Rcd at 19383 ¶ 153.

¹¹ *Id.*

¹² *LPTV DTV Report and Order*, 19 FCC Rcd at 19379 ¶ 141.

¹³ See *Auction No. 85 Announcement Public Notice*.

¹⁴ See 47 C.F.R. § 73.1635.

¹⁵ See *LPTV DTV Report and Order*, 19 FCC Rcd at 19387-19388.

¹⁶ 47 C.F.R. § 73.5002(d).

E. Noncommercial Educational Facility Election

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").¹⁷ For purposes of this filing window, this exemption applies to an engineering proposal for a digital companion channel filed by a LPTV, TV translator or Class A TV broadcast station that "is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes."¹⁸ In the *NCE Second Report and Order*, the Commission held that LPTV and TV 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.¹⁹ Applications for such NCE stations are exempt from auction.²⁰

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.²¹ Accordingly, in the FCC Form 175, applicants will have an opportunity to designate their status as an NCE station application under the definition specified in section 397(6)(B). If any applicants 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. **No applicant will be allowed to change its NCE election after the application filing deadline.**

F. Rules and Disclaimers

1. Prohibition of Collusion

To ensure the competitiveness of the auction process, the Commission's Part 1 rules prohibit competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).²² Thus, competing applicants must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect, bidding or bidding strategy, which may include communications regarding the post-auction market structure.²³ This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction, which will be announced in a future

¹⁷ See 47 U.S.C. §§ 309(j)(C) and 397(6)(B).

¹⁸ See 47 U.S.C. § 397(6)(B).

¹⁹ See Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, 18 FCC Rcd 6691, 6697 (2003) ("*NCE Second Report and Order*"), recons. pending; see also 47 C.F.R. § 73.5002 (b).

²⁰ In the *NCE Second Report and Order*, the Commission determined that short-form applicants that do not identify themselves on their FCC Form 175 as "noncommercial educational" will be considered as a matter of law, applicants for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

²¹ *NCE Second Report and Order*, 18 FCC Rcd at 6699.

²² See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1); see also 47 C.F.R. § 73.5002; Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) ("*Seventh Report and Order*").

²³ See, e.g., "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E. and F Block Bidders," *Public Notice*, DA 96-1460 (rel. August 28, 1996).

public notice.²⁴ This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.²⁵

In Auction No. 85, the rule would apply to applicants filing applications in the digital companion channel window with engineering proposals that are mutually exclusive. Even if applicants submit only one engineering proposal each that is mutually exclusive, they may not discuss with each other their bids or bidding strategies relating to any engineering proposal submitted by either applicant during the digital companion channel window.

For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction,²⁶ all controlling interests of that entity, 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.²⁷

Applicants in the digital companion channel window with engineering proposals that are mutually exclusive must not communicate indirectly about bids or bidding strategy.²⁸ Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. 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 applicants that the authorized bidder is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur.²⁹ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.³⁰ A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.³¹ Moreover, the Commission has found a violation of the anti-

²⁴ 47 C.F.R. § 1.2105(c)(1).

²⁵ See, e.g., Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n.19 (Enf. Bur. 2004), *application for review pending* (collusion rule applies to "applicants" regardless of whether they are qualified to bid); Letter to Robert Pettit from Margaret W. Wiener, 16 FCC Rcd 10080 (WTB 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).

²⁶ See, e.g., Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, 20 FCC Rcd 14648 (Video and Auctions Divs. 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

²⁷ 47 C.F.R. § 1.2105(c)(7)(i).

²⁸ *Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

²⁹ 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 (Wireless Telecom. Bur. 1998).

³⁰ *Id.*

³¹ See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 20 FCC Rcd 14648 (2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"³² and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."³³ Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."³⁴ Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application.³⁵ If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with other applicants for engineering proposals that are mutually exclusive after the short-form filing deadline.³⁶

By electronically submitting its short-form application, each applicant certifies its compliance with Sections 1.2105(c) and 73.5002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.³⁷ The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."³⁸ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.³⁹

Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁴⁰ Compliance with the disclosure requirements of the Commission's anti-collusion

³² Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

³³ Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

³⁴ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

³⁵ 47 C.F.R. § 1.2105(c)(7)(i).

³⁶ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995) ("Anti-Collusion Public Notice").

³⁷ *Id.*, 13 FCC Rcd at 11978 ¶ 13.

³⁸ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

³⁹ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁴⁰ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21558, 21560 ¶ 4 and n. 4 (1999) *citing*

rule will not insulate a party from enforcement of the antitrust laws.⁴¹ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application.⁴² The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other.⁴³ Similarly, the Bureau has long reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."⁴⁴ To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation.⁴⁵ If an applicant is found to have violated the antitrust laws or the Commission's rules 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, among other sanctions.⁴⁶

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.⁴⁷ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation.⁴⁸ Applicants are therefore required by Section 1.65 to make such

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) ("[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws."); Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994)("[A]pplicants will also be subject to existing antitrust laws.").

⁴¹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. See also "Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁴² The Commission has cited a number of examples of such anticompetitive behavior. See, e.g., Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994).

⁴³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994); see also *Anti-Collusion Public Notice*.

⁴⁴ See *Anti-Collusion Public Notice*, 11 FCC Rcd at 9645.

⁴⁵ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁴⁶ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁴⁷ 47 C.F.R. § 1.65.

⁴⁸ The Bureau cautions prospective applicants that any facsimile transmission received concerning the anti-collusion rules, whether a notification of a communication from an applicant or an applicant's agent or an allegation that some other individual or entity has violated the anti-collusion rules, will be attributed to an applicant in Auction No. 85 if the facsimile transmission originates from the premises of the applicant or any agent of the applicant or any individual or entity with privity to the applicant. It will be considered to be a material misrepresentation of fact to the Commission by the applicant if the facsimile, as received, fails to clearly and accurately identify the name of the Auction No. 85 applicant.

notification to the Commission immediately upon discovery. In addition, Section 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.⁴⁹

Any report of a communication pursuant to Sections 1.65 or 1.2105(c)(6) must be submitted by electronic mail to the following address: auction85@fcc.gov. The electronic mail report must include a subject or caption referring to Auction No. 85 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

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 agreements or other arrangements entered into relating to the competitive bidding process.⁵⁰ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁵¹

A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment C and these documents are available on the Commission's auction anti-collusion web page.⁵²

2. 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 they are seeking in this application filing window. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

Applicants are strongly encouraged to conduct their own research prior to filing in the window in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the window.⁵³ Participants in the digital companion channel window are strongly encouraged to continue such research throughout the auction. In addition, applicants should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the digital companion channel facilities they are seeking. We note that resolution of such matters could

⁴⁹ 47 C.F.R. § 1.2105(c)(6); *see also Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

⁵⁰ 47 C.F.R. § 1.2107(d).

⁵¹ *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁵² This document may be found at: <http://wireless.fcc.gov/auctions/anticollusion>

⁵³ *See e.g.*, 47 C.F.R. § 73.606.

have an impact on the availability of their specified channel. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the window.

Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to obtain their specified channel. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to file, and also to familiarize themselves with the environmental assessment obligations described in Section I.F. of this Public Notice.

Applicants in this window should note that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities.⁵⁴ Applicants should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities they are seeking in this window.

Potential bidders are reminded also that, in November of 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service.⁵⁵ In response to the enactment of the CBPA, in the *Class A Report and Order*, the Commission adopted rules to establish the new Class A television service, including rules to provide interference protection for eligible Class A television stations from new full power television stations.⁵⁶ As required by this order, an applicant in this window, upon submission of its long-form application (FCC Form 346 or 301-CA), will have to provide interference protection to qualified Class A television stations. Therefore, applicants are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the channel they seek in this window.

Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees, including information about the identity and location of Class A television stations. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/>.⁵⁷ Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the Help file. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at mbinfo@fcc.gov.

⁵⁴ See 47 C.F.R. § 73.622.

⁵⁵ Pub.L.No. 106-113, 113 Stat. Appendix I at 1501A-594 – 598 (1999), codified at 47 U.S.C. § 336(f).

⁵⁶ Establishment of a Class A Television Service, MM Docket No. 00-10, *Report and Order*, 15 FCC Rcd 6355 (2000).

⁵⁷ The Media Bureau's web page which is specific to Class A television stations is available at: <http://www.fcc.gov/mb/video/files/classa.html>.

The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

G. National Environmental Policy Act Requirements

Permittees must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA").⁵⁸ The construction of a broadcast facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility.⁵⁹ The Commission's NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

II. PRE-AUCTION PROCEDURES

A. Auction Seminar – June 12, 2006

On Monday, June 12, 2006, the Bureaus will sponsor a seminar for parties interested in participating in the filing window for Auction No. 85 at the Federal Communications Commission headquarters, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, service and auction rules, and specific information on the procedures for filing the short-form applications and associated technical data. This seminar will also provide an opportunity for applicants to ask questions of FCC staff.

To register, complete the registration form attached hereto as Attachment A and submit it by Thursday, June 8, 2006. Registrations are accepted on a first-come, first-served basis. This seminar is free of charge.

For individuals who are unable to attend, an Audio/Video of this seminar will be available via webcast from the FCC's Auction 85 web page at <http://wireless.fcc.gov/auctions/85/>. Select the "Auction Seminar" link.

B. General Filing Requirements

Applicants for LPTV and TV Translator digital companion channels must file a short-form application and the engineering data from FCC Forms 346 or 301-CA. Such information is required so that the staff can make mutual exclusivity determinations. A comprehensive review of applicants' technical proposals

⁵⁸ 47 C.F.R. Ch. 1, Subpart I.

⁵⁹ 47 C.F.R. §§ 1.1305-1.1319.

will be undertaken by the staff only following the submission of long-form applications by winning bidders post-auction, or by applicants identified as non-mutually exclusive, and by applicants resolving application mutual exclusivity during the established settlement period.

C. Short-form Application (FCC Form 175) – Due before 6:00 p.m. ET on June 30, 2006

All applicants must submit a short-form application and associated technical data electronically via the FCC Auction System.⁶⁰ This application must be submitted electronically and received at the Commission prior to 6:00 p.m. ET on June 30, 2006. **Late applications will not be accepted.** There is no application fee required when electronically filing an FCC Form 175.

Applications may be filed any time beginning at 9:00 a.m. ET on June 19, 2006, until 6:00 p.m. ET on June 30, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on June 30, 2006.

Applicants should carefully review 47 C.F.R. Sections 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Applicants must always click on the **SUBMIT** button on the *Certify and Submit* screen of the electronic form to successfully submit their FCC Forms 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B of this Public Notice. Technical support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

D. Application Processing

After the close of the window, the Commission will make mutual exclusivity determinations with regard to all timely and complete filings. Applications received during the filing window that are not mutually exclusive with any other applications submitted in the filing window will be identified by subsequent public notice.⁶¹ Applicants identified as non-mutually exclusive will be instructed to submit FCC Form 301-CA or FCC Form 346 within 30 days.⁶² Complete FCC Forms 301-CA and 346 non-mutually exclusive applications will be processed and the Media Bureau will issue CDBS-generated public notices listing those applications determined to be acceptable for filing. Petitions to deny must be filed within 10 days of the pertinent public notice.⁶³

The Bureaus will issue a public notice identifying mutually exclusive applications received during the window.⁶⁴ That public notice also will specify a settlement period for resolving application mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of

⁶⁰ 47 C.F.R. § 1.2105(a).

⁶¹ 47 C.F.R. § 73.5002(a).

⁶² See 47 C.F.R. § 73.3571(h)(3).

⁶³ See 47 C.F.R. § 73.5006(b); see also 47 C.F.R. § 1.2105(c).

⁶⁴ See 47 C.F.R. § 73.3572. In determining mutual exclusivity among the applications, the staff will apply 47 C.F.R. §§ 73.612, 73.613, 73.622, 73.623, 73.625, 73.699, 73.6010, 74.703, 74.705, 74.706, 74.707, 74.708, 74.710, 74.792, 74.793, and 74.803.

universal settlements for eligible applicants.⁶⁵ Mutually exclusive applicants may communicate with each other for the purpose of resolving conflicts only during the settlement period that will be specified in that forthcoming public notice.⁶⁶

Technical amendments submitted by applicants to resolve conflicts must be minor, as defined by the applicable rules of the service, and must not create any new mutual exclusivity or other application conflict. An applicant may only file a technical amendment during the settlement period specified by public notice. In addition, no "partial settlements" will be permitted. A "partial settlement" is one that reduces the number of proposals in a group, but which does not completely resolve the mutual exclusivity of that group.

Commercial applications that remain mutually exclusive after the settlement period closes will proceed to auction. The Bureaus will then issue a public notice identifying the auction date and seek comment on procedures for further processing the remaining mutually exclusive short-form applications. The Bureaus will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and specifying the deadline for resubmitting such corrected applications.

As discussed further in Section III.H., applicants will not be permitted to make major modifications to the FCC Form 175.⁶⁷

III. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or construction permits.⁶⁸ The short-form application is the first part of the Commission's two-phased auction application process which contemplates that potential construction permittees or licensees file streamlined, short-form applications in which applicants certify under penalty of perjury as to their qualifications.⁶⁹ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications. In the second phase, winning bidders file a more comprehensive long-form application.⁷⁰

Entities seeking construction permits available in Auction No. 85 must file electronically via the FCC Auction System a short-form application before 6:00 p.m. ET on June 30, 2006, following the procedures prescribed in Attachment B to this Public Notice. For Auction No. 85, if an applicant claims eligibility for a bidding credit, the information provided in its short-form application will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submission of accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and

⁶⁵ See 47 C.F.R. § 73.5002(c)(1) & (d)(1).

⁶⁶ See 47 C.F.R. § 73.5002(d).

⁶⁷ See 47 C.F.R. § 1.2105(b).

⁶⁸ See 47 C.F.R. § 1.2105.

⁶⁹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁷⁰ See 47 C.F.R. § 1.2105.

otherwise qualified to hold a license.⁷¹ Applicants should read the instructions set forth in Attachment B to this Public Notice carefully and should consult the Commission's 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 short-form applications.

An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Engineering Proposals

In addition to submitting the short-form application, applicants must submit technical data from FCC Forms 301-CA or 346. Applicants will be required to submit the following information:

- A description of the engineering proposal and its service type
- The engineering proposal purpose (always Digital Companion Channel for this auction)
- Information identifying the existing facility, including Facility ID and Call Sign
- General information about this facility, including antenna location coordinates and technical specifications (e.g., elevation, tower height, and transmitter output power)
- The antenna type (nondirectional, directional "off-the-shelf," or directional composite); manufacturer and model; electrical beam tilt; and, for a directional antenna, rotation.

For directional composite antenna types, the applicant must also specify relative field values for azimuths 0 to 350 degrees (in increments of 10 degrees). Up to five additional field values may be provided. Additional instructions on submitting the technical data portion of the short-form application are included in Attachment B.

B. New Entrant Bidding Credit

To fulfill its obligations under 47 U.S.C. § 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications shall be considered when determining an auction applicant's eligibility for the New Entrant Bidding Credit.⁷² The applicant's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline, June 30, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Any applicant intending to divest a media interest or make any other

⁷¹ See *id.*

⁷² "Media of mass communication" include both commercial and noncommercial educational (NCE) full-power broadcast stations.

ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline, June 30, 2006.⁷³ Prospective applicants are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in an applicant include:

- all officers and directors of a corporate applicant;
- any owner of 5 percent or more of the voting stock of a corporate applicant;
- all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.⁷⁴

In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the applicant. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.⁷⁵ Applicants should note that the mass media attribution rules were revised in 1999.⁷⁶

Applicants also are reminded that, by the *New Entrant Bidding Credit Reconsideration Order*,⁷⁷ the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that auction applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.⁷⁸

⁷³ The fact that, on June 30, 2006, a bidder has a pending or granted application to assign or transfer control of a media interest shall not be sufficient to avoid attribution. To avoid attribution, an applicant or its attributable interest holders must have consummated the transaction by June 30, 2006. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing application deadline. See *Liberty Productions, a Limited Partnership, Memorandum Opinion and Order*, 16 FCC Rcd 12061, stay denied, 16 FCC Rcd 18966 (2001), *aff'd sub nom. Biltmore Forest Broadcasting FM, Inc. v. F.C.C.*, 321 F.3d 155 (D.C. Cir.), cert. denied, 540 U.S. 981 (2003) ("*Liberty Productions*").

⁷⁴ See 47 C.F.R. § 73.3555 Note 2.

⁷⁵ See *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992).

⁷⁶ See *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order*, MM Docket No. 94-150, 14 FCC Rcd 12559 (1999) (prior history omitted).

⁷⁷ *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, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999).

⁷⁸ See 47 C.F.R. § 73.5008(c).

Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.⁷⁹ However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the winning bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.⁸⁰ A medium of mass communications is defined in 47 C.F.R. § 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among "media of mass communications" as defined in Section 73.5008(b).⁸¹

C. Application Requirements

In addition to the ownership information required pursuant to 47 C.F.R. §§ 1.2105 and 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.⁸² In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.⁸³

1. Bidding Credits

Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,⁸⁴ are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 C.F.R. § 73.5008;

⁷⁹ Further, any applicant asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 C.F.R. § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

⁸⁰ 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, *Memorandum Opinion and Order*, 14 FCC Rcd 8724, 8764 ¶ 75 (1999) ("*Broadcast Competitive Bidding First Reconsideration Order*"); 47 C.F.R. § 73.5007.

⁸¹ See *Minnesota Christian Broadcasters, Inc.*, 18 FCC Rcd 614 (2003) ("*Minnesota Christian Broadcasters*"), *aff'd sub nom. Carol DeLaHunt v. FCC*, No. 03-1029, slip op. (D.C. Cir. Feb. 4, 2004) (unreported opinion available at 88 Fed.Appx. 418 (D.C. Cir.); *aff'd sub nom. Minnesota Christian Broadcasters, Inc. v. FCC*, 411 F.3d 283 (D.C. Cir 2005).

⁸² See 47 C.F.R. §§ 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

⁸³ See 47 C.F.R. §§ 73.5007, 73.5008.

⁸⁴ See 47 C.F.R. § 73.5007.

- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 C.F.R. § 73.5008; and
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 C.F.R. § 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 C.F.R. § 73.3555 and Note 2 of that section.⁸⁵

2. Unjust Enrichment

Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.⁸⁶

D. Consortia and Joint Bidding Arrangements

Applicants will be required to indicate on their applications whether they have entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.⁸⁷ Applicants also will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure.⁸⁸ If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants with mutually exclusive engineering proposals after the application filing deadline.⁸⁹

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants with mutually exclusive engineering proposals provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.⁹⁰ While the anti-collusion rules do not prohibit non-auction related

⁸⁵ See 47 C.F.R. § 73.5008.

⁸⁶ See 47 C.F.R. § 73.5007(c).

⁸⁷ 47 C.F.R. § 1.2105(a)(2)(ix).

⁸⁸ 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

⁸⁹ See above Section I.E.1.

⁹⁰ 47 C.F.R. § 1.2105(c)(4)(i), (ii).

business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.⁹¹ Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

E. Ownership Disclosure Requirements

The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply.⁹² Therefore, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short-form application are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.⁹³ Each applicant is responsible for information submitted in its short-form application being complete and accurate.

To simplify filling out its short-form application, an applicant's most current ownership information on file with the Commission in an electronic format compatible with the short-form application (FCC Form 175), such as information submitted in an on-line FCC Form 602 in connection with wireless services or in a short-form application (FCC Form 175) filed for a previous auction, will be entered automatically into the applicant's short-form application for Auction No. 85. An applicant must review carefully any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that needs to be changed directly in the short-form application.

F. Provisions Regarding Former and Current Defaulters

Each applicant in Auction No. 85 must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates,⁹⁴ its controlling interests, or any affiliate of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.⁹⁵ In addition, each applicant must certify

⁹¹ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, 16 FCC Rcd 18113, 18117 (2001); see also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 467 (1997).

⁹² 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, 15976 (1998) ("*Broadcast Competitive Bidding First Report and Order*"); *aff'd*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.); *aff'd*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

⁹³ Section 73.5002 of the Commission's rules specifies the bidding procedures, certification requirements and the anti-collusion rules applicable to mutually exclusive applications for commercial broadcast services subject to auction. Subsection (b) of that rule requires the timely submission of short form applications, along with the required certifications, information and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. 47 C.F.R. § 1.2105 *inter alia* requires the disclosure on the short-form application of the applicant's ownership information as specified in 47 C.F.R. § 1.2112.

⁹⁴ Affiliates and controlling interests are defined at 47 C.F.R. § 1.2110.

⁹⁵ 47 C.F.R. § 1.2105(a)(2)(xi); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and*

under penalty of perjury on its short-form application that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, as of the filing deadline for applications to participate in a specific auction, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency.⁹⁶ Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

“Former defaulters” — *i.e.*, applicants, including any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, that in the past have defaulted on any Commission construction permits or licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 85, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.⁹⁷

In contrast, an applicant is not eligible to participate in competitive bidding in Auction No. 85 if the applicant, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction.⁹⁸

Applicants are encouraged to review the Wireless Telecommunications Bureau’s previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process.⁹⁹ For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹⁰⁰ Therefore, with respect to regulatory or application fees, the sanctions Sections 1.2105(a) and 1.2106(a)

Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293, 15317 ¶ 42 and n. 142 (modified by Erratum, DA 00-2475 (WTB Nov. 3, 2000)) (“*Fifth Report and Order*”).

⁹⁶ 47 C.F.R. § 1.2105(a)(2)(x); *Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

⁹⁷ 47 C.F.R. §§ 1.2105(a)(2)(xi) and 1.2106(a).

⁹⁸ 47 C.F.R. § 1.2105(a)(2)(x); *see Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n. 142 (“If any one of an applicant’s controlling interests or their affiliates...is in default on any [construction permit or] Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.”).

⁹⁹ *See* “Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, 19 FCC Rcd 21920 (Wireless Telecom. Bur. 2004) (“*Auction Default Disclosure Public Notice*”). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁰⁰ *See* Letter to Cheryl A. Tritt, Esq. from Margaret Wiener, Chief, Auctions and Spectrum Access Division, WTB, 19 FCC Rcd 22907 (WTB 2004) (clarifying the term “debt” or “non-tax debt” as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at <http://wireless.fcc.gov/auctions/58/>.

impose with respect to competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹⁰¹

The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.¹⁰² Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules "are not affected" by the red light rule.¹⁰³ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 C.F.R. § 1.2105.¹⁰⁴ Thus, while the red light rule may ultimately prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in this auction or its upfront payment obligation.

Prospective applicants in Auction No. 85 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,¹⁰⁵ and such review may result in the dismissal of a winning bidder's long-form application.¹⁰⁶

G. Other Information

Applicants owned by minorities or women, as defined in Section 1.2110(c)(2), may identify themselves in filling out their short-form applications regarding this status.¹⁰⁷ This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.

¹⁰¹ Even where Commission rules expressly enable late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹⁰² Amendment of Part 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("*Debt Collection Order*").

¹⁰³ *Id.*, 19 FCC Rcd at 6541 n.11. Footnote 11 specifically mentions 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

¹⁰⁴ See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and Form 175 default and delinquency disclosure requirements for auction applicants).

¹⁰⁵ See *Debt Collection Order*, 19 FCC Rcd at 6540. See also 47 C.F.R. § 1.1112.

¹⁰⁶ Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

¹⁰⁷ 47 C.F.R. § 1.2110(c)(2).

H. Minor Modifications to Short-Form Applications (FCC Forms 175)

Following the deadline for filing short-form applications (FCC Forms 175) on June 30, 2006, applicants in Auction No. 85 are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (e.g., make major changes to their engineering proposals, change control of the applicant, or increase a previously claimed bidding credit).¹⁰⁸ No applicant will be allowed to change its noncommercial educational (NCE) election after the application filing deadline on June 30, 2006. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

Any application amendment and related statements of fact must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹⁰⁹

An applicant must make permissible minor changes to its short-form application, as defined by Section 1.2105(b), on-line. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

In addition, in the event that changes cannot be made immediately in the FCC Auction System for any reason, an applicant must submit a letter, briefly summarizing the changes and subsequently update their short-form applications in the FCC Auction System as soon as possible. Any letter describing changes to applicant's short-form application should be submitted by electronic mail to the following address: auCTION85@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 85 and the name of the applicant (e.g., "RE: Changes to Auction No. 85 Short-Form Application of ABC Corp."). The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

I. Maintaining the Accuracy of Short-Form Application Information

Section 1.65 of the Commission's rules requires each 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.¹¹⁰ Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit must be reported immediately.¹¹¹ If an amendment reporting substantial changes is a "major amendment" as defined by 47 C.F.R. § 1.2105,

¹⁰⁸ See 47 C.F.R. § 1.2105.

¹⁰⁹ See 47 C.F.R. § 1.917.

¹¹⁰ 47 C.F.R. § 1.65.

¹¹¹ For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's notification. See *Liberty Productions*, 16 FCC Rcd at 12078.

the major amendment will not be accepted and may result in the dismissal of the short-form application.¹¹²

Applicants must report Section 1.65 modifications to their short-form application by electronic mail and submit a letter briefly summarizing the changes to the following address: auCTION85@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 85 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about such changes should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

It is possible for an applicant to make certain minor changes to its short-form application, such as a change of applicant address or contact information, on-line at any time after the initial short-form application deadline. Applicants must click on the SUBMIT button in the FCC Auction System for such changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

For more information, contact:

Video Division, Media Bureau

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

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

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

For general auction questions: Linda Sanderson at (717) 338-2888

List of Attachments:

- | | |
|---------------|--|
| Attachment A: | FCC Seminar Registration Form |
| Attachment B: | Guidelines for Completion of FCC Form 175 and Exhibits |
| Attachment C: | Summary Listing of Commission and Bureau Documents Addressing Application of the Anti-Collusion Rule |

¹¹² See 47 C.F.R. § 1.2105(b)(2).

ATTACHMENT A

**FCC AUCTION NO. 85 FILING WINDOW
SEMINAR REGISTRATION FORM**

The FCC will sponsor a one-day seminar for Auction No. 85 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, and specific information on the procedures for filing the FCC Form 175 and associated technical data.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Monday, June 12, 2006
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Registration 10:00 a.m. - 10:30 a.m.

Seminar 10:30 a.m. - 12:30 p.m.

If hotel accommodations are needed

Please contact (888) 225-5322 (option #2) for a list of hotels in the area.

To register, complete the form below and
return no later than

Thursday, June 8, 2006,

by facsimile to:

FCC Auction 85

Auctions and Spectrum Access Division

1270 Fairfield Road

Gettysburg, PA 17325-7245

FAX: (717) 338-2850

Phone: (717) 338-2888

Note: The seminar will also be available via webcast and may be viewed by clicking on the Auction Seminar link on the Auction No. 85 web page, <http://wireless.fcc.gov/auctions/85/>. For further information about accessing FCC webcasts, please visit <http://www.fcc.gov/realaudio/>.

I/We will attend the Auction No. 85 Seminar, scheduled for Monday, June 12, 2006.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____

ATTACHMENT B

ELECTRONIC FILING AND REVIEW OF THE FCC FORM 175

NOTICE

The Federal Communications Commission uses information collected in FCC Form 175 in determining whether applicants are legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. In addition, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses the information in determining whether the applicant is eligible for the status requested. The Commission's auctions, including the collection of information to determine applicants' qualifications to participate pursuant to Commission rules and requirements, are designed to limit the competitive bidding to qualified applicants; to deter possible abuse of the bidding and licensing process; and to enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest.

The Commission estimates that each response to this collection of information will take on average 1.5 hours. This estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0600). PLEASE DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

The information collected in FCC Form 175 is required to be filed by all applicants to participate in a Commission auction, pursuant to Section 309(j)(5) of the Communications Act and section 1.2105 of the Commission's rules. See 47 U.S.C. § 309(j)(5), 47 C.F.R. § 1.2105. Information collected in a submitted FCC Form 175 will be available for public inspection.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a current valid OMB control number with this notice. This collection has been assigned OMB control number 3060-0600.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

Applicants must submit their short-form applications electronically, via the Internet. **Short-form applications must be submitted and confirmed prior to 6:00 p.m. ET on June 30, 2006.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications, and as such will be available for public inspection. Accordingly, applicants should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in short-form applications. Applicants may request that information submitted not be made routinely available for public inspection following the procedures set forth in 47 C.F.R. § 0.459. Pursuant to Section 0.459(a), such requests must be included as an attachment to Form 175 and identify the information to which the request applies. Because the required information bears on applicants' qualifications, confidentiality requests will not be routinely granted.

Applicants may make multiple changes to their short-form applications until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

Software Requirements

Applicants must meet the following minimum software requirements:

- Web Browser:
 - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2_05 installed.
 - or
 - Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2_05.

Java Plug-In Version 1.4.2_05 is available for downloading at http://java.sun.com/products/archive/j2se/1.4.2_05/index.html (choose the JRE version).

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

Currently, the Apple® Mac OS® is not supported.

J. Logging On

To submit a short-form application electronically via the Internet, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the FCC *Integrated Spectrum Auction System* page, applicants may log in to create Form 175 applications using their FCC registration numbers (FRNs) and passwords.

K. Application Filing Instructions

The on-line FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.¹¹³ Pursuant to

¹¹³ See generally, 47 C.F.R. § 1.2105.

Section 1.2105(a), the FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the electronic FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the electronic FCC Form 175.

The screens comprising Form 175 consist of six series, each requesting separate types of information: 1) *Applicant Information*; 2) *Engineering Proposals*; 3) *New Entrant Bidding Credit Eligibility*; 4) *Agreements*; 5) *Ownership*; and 6) *Certify and Submit*. In addition, *Summary* screens, a seventh series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application. If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the Form 175 will ask for responsible party information.

Applicants should be able to fill out Form 175 by following the instructions below. Additional help in filling out Form 175 can be accessed from Form 175 in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Questions** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, filers should use the contact information provided in this Public Notice to obtain additional assistance.

1. Applicant Information

The *Applicant Information* screens are the first series of screens in Form 175. In the *Applicant Information* screens, the applicant will provide basic information, including

- The applicant's legal classification, e.g., individual, corporation, etc.
- Optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company;
- The applicant's name, which will be used as the bidder name during the auction
- Citizenship (for individuals) or jurisdiction of formation (for legal entities)
- For applicants classified as legal entities – e.g., corporations and partnerships – the name of and information regarding the entity's responsible individual
- The name, address, telephone and facsimile number of a contact person who will communicate with the Commission regarding the applicant's Form 175
- The names of up to three persons authorized to bid for the applicant in the auction
- The applicant's preference for electronic or telephonic bidding
- Whether the applicant claims a new entrant bidding credit and the amount claimed.¹¹⁴

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

¹¹⁴ See generally, 47 C.F.R. §§ 1.2105(a)(2)(ii)(A), (iii), and (iv), 73.5002(b).

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.
- To simplify filling out Form 175, applicants that have the same address as their responsible party can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the responsible party's address on the Responsible Party page. P.O. Boxes may not be used for a responsible party's address.
- P.O. Boxes may not be used for a contact person's address. Applicants may also use a **COPY APPLICANT ADDRESS** button on the Contact Information page, to fill in the contact person's address from the applicant address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, only those bidders listed on the Form 175 will be authorized to place or withdraw bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required for telephonic bidding.

2. Engineering Proposals

The *Engineering Proposal* screens make up the second series of screens in Form 175. The initial screen, *View/Edit Proposals*, lists any existing engineering proposals, showing the name, application purpose, and service type for each one. To edit an existing engineering proposal, the applicant clicks the proposal's name. The applicant can also create a new proposal by clicking **CREATE NEW PROPOSAL** on the *View/Edit Proposals* screen.

Whether editing an existing proposal or adding a new one, the applicant will use the *Engineering Proposal* screens to provide information, including:

- A description of the engineering proposal and its service type
- The engineering proposal purpose (always Digital Companion Channel for this auction)
- Information identifying the existing facility, including Facility ID and Call Sign
- General information about this facility, including antenna location coordinates and technical specifications (e.g., elevation, tower height, and transmitter output power)
- The antenna type (nondirectional, directional "off-the-shelf," or directional composite); manufacturer and model; electrical beam tilt; and, for a directional antenna, rotation.

For directional composite antenna types, the applicant must also specify relative field values for azimuths 0 to 350 degrees (in increments of 10 degrees). Up to five additional field values may be provided.

3. New Entrant Bidding Credit Eligibility

The *New Entrant Eligibility* screens are the third series of screens in Form 175. On the initial screen, applicants indicate whether they are claiming the New Entrant bidding credit and, if so, whether they are claiming a 25 percent or 35 percent New Entrant bidding credit. Applicants should ensure that this

bidding credit information is consistent with the bidding credit eligibility information provided on the first *Applicant Information* screen.

Applicants claiming either no New Entrant bidding credit or a 35 percent New Entrant bidding credit will not need to provide additional information in Form 175 regarding their claimed New Entrant bidding credit. Such applicants will continue to the next series of screens.¹¹⁵

Applicants claiming a 25 percent New Entrant bidding credit will provide additional information regarding existing mass media facilities in which the applicant, or any individual or entity with an attributable interest in the applicant, has an attributable interest. Applicants will identify

- The existing mass media facility or facilities;
- The individual or entity with an attributable interest in the existing mass media facility;
- The attributable interest in the facility; and whether any proposed broadcast facilities are in the 'same area' as existing mass media facilities, as defined by applicable Commission rules. See 47 C.F.R. §§ 73.5007, 73.5008.
- In the event that the applicant indicates that any of the proposed broadcast facilities are in the 'same area' as the identified existing mass media facility, the applicant will continue to an additional screen where the applicant will indicate which proposed broadcast facility in the auction is in the 'same area' as the identified existing mass media facility.

Once the applicant has identified all relevant existing mass media facilities, and all proposed broadcast facilities in the 'same area' as each relevant existing mass media facility, applicants will continue to the View/Edit All Facilities screen. This screen lists the applicant's claimed New Entrant bidding credit of 25 percent, the relevant existing mass media facilities, and the proposed broadcast facilities in the 'same area' as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Edit** icon or the **Modify bidding credit selection** link to return to the initial New Entrant bidding credit eligibility screen.
- Modifying information about relevant mass media facilities by clicking on them.
- Clicking the **Delete This Facility** link to delete a facility and identified proposed broadcast facilities in the 'same area.'
- Modifying information regarding a proposed broadcast facility by clicking on its identifier.
- Clicking the **Remove** icon next to information about a particular proposed broadcast facility in the 'same area' to remove the corresponding facility.
- Clicking the **Add a proposed 'Same Area' Facility to [an existing mass media facility]** link to add a new proposed broadcast facility in the 'same area.'

¹¹⁵ Full-service noncommercial educational stations, on both reserved and nonreserved channels, are included among "media of mass communications" as defined in Section 73.5008(b). See *Minnesota Christian Broadcasters*, 18 FCC Rcd at 614. However, pursuant to 47 C.F.R. § 73.5007, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the winning bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.

- Clicking the **CREATE NEW MASS MEDIA FACILITY** button to add additional mass media facilities.

When all relevant existing mass media facilities, and proposed broadcast facilities in the 'same area' as each relevant existing mass media facility, have been identified, click the **CONTINUE** button.

4. Agreements

The *Agreements* screens are the fourth series of screens in Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission's rules.¹¹⁶

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission's rules by responding yes or no to a question asking whether the applicant has entered into partnerships, joint ventures, consortia or other agreements or understandings of any kind relating to the construction permits being auctioned, including any such agreement relating to the post-auction market structure. If an applicant answers "No," the applicant will continue with the Ownership series of screens, described below. If the applicant answers "Yes," the applicant will continue with additional *Agreements* screens described here.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique.

In the event the other party to the agreement is an entity or an individual, different identifying information is required. For either entities or individuals, applicants may provide FCC Registration Numbers (FRN), if available. Providing the FRN helps prevent identification errors resulting from parties having similar names or a single party using multiple names. Provision of a party's FRN is optional.

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be cleared from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

The next *Agreements* screen is the *View/Edit Agreements* screen. This screen lists the agreements and parties to each that already have been entered. From this screen, you have the following options:

- Click the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modify agreement identifiers by clicking on them.
- Click the **Delete This Agreement** link to delete an agreement and associated parties.
- Modify information regarding a particular party to an agreement by clicking on the party's name.

¹¹⁶ See generally, 47 C.F.R. § 1.2105(a)(2) (viii).

- Click the **Remove** icon next to information about a particular party to remove the corresponding party.
- Click the **Add Party to This Agreement** link to add a new party to an agreement.
- Click the **CREATE NEW AGREEMENT** button to add additional agreements.

When you have identified all agreements and the parties to each agreement, click the **CONTINUE** button.

5. Ownership

The *Ownership* screens are the fifth series of screens in the Form 175. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules.¹¹⁷ Commission rules also require the disclosure and description of FCC-regulated businesses that are owned by the applicant or parties with certain ownership interests in the applicant.¹¹⁸

a. Information Already On File with the Commission

Some applicants may have previously filed a disclosure of ownership information in an FCC Form 602 in connection with wireless services or in an FCC Form 175 filed for a previous auction. To simplify filling out its Form 175, an applicant's most current ownership information on file with the Commission from an FCC Form 602 or an FCC Form 175, if in an electronic format compatible with Form 175, will automatically be entered into Form 175. Applicants with ownership information automatically entered into Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Applicants are responsible for information submitted in its Form 175 being complete and accurate. Applicants must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting its Form 175. Applicants can update the information directly in the Form 175. After the deadline for filing the Form 175, ownership information in a submitted Form 175 will be considered to be the applicant's most current ownership information on file with the Commission.

b. Disclosable Interest Holders and FCC-Regulated Businesses

- **Section 1.2112(a) of the Commission's rules lists the interest holders in the applicant that must be disclosed in Form 175.**¹¹⁹
- **Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in Form 175.**¹²⁰

¹¹⁷ See generally, 47 C.F.R. §§ 1.2105(a)(2)(ii)(B), 1.2110, 1.2112, 73.5002.

¹¹⁸ See 47 C.F.R. § 1.2112.

¹¹⁹ 47 C.F.R. § 1.2112(a). Section 73.5002 specifies the bidding procedures, certification requirements and anti-collusion rules applicable to applications for commercial broadcast services that are subject to auction. Subsection (b) requires the timely submission of short-form applications along with all required certifications, information and exhibits pursuant to 47 C.F.R. § 1.2105(a) and any Commission public notices. Section 1.2105 requires the disclosure on the short form of applicant ownership information, as specified in Section 1.2112.

The initial *Ownership* screen enables the applicant to: 1) add information regarding a disclosable interest holder; 2) add information regarding the FCC-regulated businesses in which the applicant has an interest; or 3) upload ownership information from a file prepared by the applicant.

Uploading information from a file prepared by the applicant is an alternative to individually keying information into the *Ownership* screens in Form 175. Applicants may upload ownership data in a text file, which will then be processed and populated into the system as the applicant's current ownership filing (provided there were no errors). This feature may benefit those applicants with large amounts of ownership data that would otherwise have to be entered into the system manually. It also may benefit those applicants who previously provided ownership data to the FCC in a similar format for other purposes, such as in connection with filing FCC Form 602 in relation to wireless services or an FCC Form 175 for a previous auction. Instructions on how to prepare and upload such a file are provided at <http://wireless.fcc.gov/auctions/ownership-upload>. After a successful upload, the *Upload Ownership Disclosure Information Confirmation* screen will appear. Applicants then may click the **CONTINUE** button, which loads the *View/Edit Ownership* screen described below.

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- If an application includes one or more disclosable interest holders with an indirect ownership in the applicant,¹²¹ the application must include an attachment describing the relationship between the indirect interest holder(s) and the applicant. The attachment should provide an overview of the ownership chain that links the indirect owners to the applicant, *e.g.*, indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.¹²² One attachment connecting all indirect owners to the applicant is sufficient; a separate attachment for each indirect owner is not required. An overview of the ownership connections is sufficient; the attachment does not need to duplicate all the detailed information already provided in the Form 175.
- The "Percent of Interest Held in Applicant" should reflect the disclosable interest holder's aggregate ownership interest in the applicant. In some cases, *e.g.*, circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%.
- FCC-regulated businesses in which the applicant has an interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has an interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a Disclosable Interest Holder.
- When adding an FCC-regulated business, "Percent of Interest Held" refers to the percent of interest, direct or indirect, held by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business.

¹²⁰ 47 C.F.R. § 1.2112(a)(7).

¹²¹ See 47 C.F.R. § 1.2112(a)(6).

¹²² *Id.*

- To simplify filling out Form 175, applicants can click on the **select business(es) already submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another Disclosable Interest Holder. When doing so, be certain to enter the "Percent of Interest Held" in the FCC regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

The *View/Edit Ownership Disclosure Information* screen summarizes Ownership information already entered in Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into two groups:

- Disclosable Interest Holders of this Applicant
- FCC Regulated Businesses of this Applicant

To view the detailed information submitted regarding the applicant, a disclosable interest holder, or an FCC-regulated business, click on the relevant party's name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder's information.

6. Summary

The *Summary* screens, are the sixth series of screens in Form 175. The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's Form 175 to help locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for errors in the information submitted.

The first *Summary* screen, the *Summary Overview* screen, lists the first four series of screens in the application and provides a **VIEW/EDIT** button to access each one. Here is what happens if you click **VIEW/EDIT** for each series:

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing what you entered for each data entry field. To change any data item, click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Engineering Proposals takes you to the *View/Edit Proposals* screen discussed in the preceding Engineering Proposals section.
- Clicking **VIEW/EDIT** for New Entrant Eligibility takes you to the *New Entrant Eligibility* screen discussed in the preceding New Entrant Bidding Credit Eligibility section.
- Clicking **VIEW/EDIT** for Agreements takes you to the *Agreements* screen discussed in the preceding Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes you to the *View/Edit Ownership Disclosure Information* screen discussed in the preceding Ownership section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters any errors that must be corrected before submitting the application, the errors will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters any apparent errors that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent error, click its corresponding **EDIT** button.

Applicants are solely responsible for providing complete and accurate information in Form 175. The automated check is provided to assist applicants in completing Form 175. However, the automated check cannot be relied upon to determine whether the information provided in the Form 175 is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter any errors, a box will appear displaying the message "**No Errors found - You may continue to Certify and Submit.**" Applicants may then click the **CONTINUE TO CERTIFY** button.

7. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, additional information can be provided in an attachment. An attachment should not be used to provide information that can be supplied in any of the screens comprising the FCC Form 175.

The screen for adding an attachment to Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. The *Add Attachment* screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment. If the attachment is a request for a waiver of any of the Commission's rules or procedures, the applicant should identify the "Type" of attachment as a "Waiver" to facilitate prompt processing. Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button.

A list of any attachments already uploaded along with the applicant's Form 175 appears at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats -- including (but not limited to) Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text--and must verify that the files contain all exhibit information. Files may be no larger than 10 Mb. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended. Files must not be password-protected.

8. Certify and Submit

The *Certify and Submit* screens are the seventh and final series of screens in Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission's competitive bidding processes.¹²³

The first *Certify and Submit* screen requires applicants to indicate whether they, their affiliates, their controlling interests, or any affiliates of their controlling interests have ever been in default on any

¹²³ See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency.¹²⁴ Applicants associated with a relevant entity that has been in default or delinquent but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.¹²⁵

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application.

Once the two *Certify and Submit* screens have been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

FCC Form 175 applications must be submitted and confirmed prior to **6:00 p.m. ET on June 30, 2006**. Late applications or unconfirmed submissions of electronic data will not be accepted.

9. Withdrawing an Application Before the Short-Form Filing Deadline And Updating Existing Applications

a. Withdrawing an Application

If you wish to withdraw a submitted application before the short-form filing deadline, click on the **Withdraw Application** icon on the *Auction Application Manager Create or Review Auction Applications* page and confirm that you want to withdraw your application. If you subsequently decide to file an application, you will have to re-enter all previously-submitted data. Applications may not be withdrawn after the short-form application filing deadline.

b. Updating Existing Applications

Once you have logged into the Auctions Application Manager, the *Create or Review Auction Applications* page displays any application you have created or submitted within a filing window. **Note:** This page shows the application status, the date and time the application was last updated; and the date and time the application was last submitted. You may use this page as a reference to confirm the date and time of your most recent submission of the application.

To review or continue working on an existing application, click its auction number. This produces the application's Summary page and places you in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their Form 175. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with your unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

¹²⁴ See 47 C.F.R. § 1.2105(a)(2)(xi).

¹²⁵ See 47 C.F.R. § 1.2106(a).

After the short-form filing deadline (6:00 p.m. ET June 30, 2006), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, make major changes to their engineering proposals, change the certifying official, change control of the applicant, change their election for a noncommercial educational station, or seek an increase in previously-claimed bidding credit eligibility).¹²⁶

L. Application Review

Once the FCC has completed the short-form application review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Auction Applications** link in the Public Access area on the FCC Integrated Spectrum Auction System page to start your search.

M. Technical Support

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. **All calls to the FCC Technical Support Hotline are recorded.**

FCC Technical Support can also be contacted electronically by filling out a help request form at <https://esupport.fcc.gov/request.htm>.

¹²⁶ See 47 C.F.R. § 1.2105.

ATTACHMENT C

SUMMARY LISTING OF COMMISSION AND BUREAU DOCUMENTS ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULE

A. Commission Decisions:

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, FCC 94-61, *Second Report and Order*, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7253-7255 ¶¶ 48-55 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd 4277 (1995), Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd 15374 (1996).

Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970 (1997); Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755 (1998).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, 14 FCC Rcd 8816 (1999).

Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8305 (1998); Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78 ¶ 20 (1999).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

B. Wireless Telecommunications Bureau Decisions:

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-13, *Order*, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

1. Public Notices:

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, 11 FCC Rcd 7031 (Auc. Div. 1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

2. Letters from the Office of General Counsel, the Wireless Telecommunications Bureau and the Media Bureau:

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcero from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1996).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, 10 FCC Rcd 13783 (Auc. Div. 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to David L. Nace from Kathleen O'Brien Ham, 11 FCC Rcd 11363 (Auc. Div. 1996).

Letter to Elliott J. Greenwald from Christopher J. Wright, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to Robert Pettit from Margaret W. Wiener, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, 21 FCC Rcd 520 (Auc. Div. 2006).

C. Enforcement Bureau Decisions:

Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626 (Enf. Bur. 2004).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, 19 FCC Rcd 18635 (Enf. Bur. 2004).

D. Civil Actions Initiated by U.S. Department of Justice:

U.S. v. Omnipoint Corp., Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

"Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release*, U.S. Department of Justice (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

How to Obtain Copies of the Anti-Collusion Decisions:

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>.

The documents may be located by using our search engine (select the link "search"). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 (telephone) or <http://www.bcpweb.com>.