



# PUBLIC NOTICE

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## **Supplemental AM New Station and Major Modification Auction Filing Window for Auction 84; Minor Modification Application Freeze**

### **Notice and Filing Requirements Regarding October 1-5, 2007, Window for Certain AM Construction Permit Applications for Rockland County, New York; Notice Regarding Freeze on the Filing of AM Expanded Band Minor Change Construction Permit Applications**

#### **Report No. AUC-07-84-F (Auction 84)**

The Media Bureau (“MB”) and the Wireless Telecommunications Bureau (“WTB”) (collectively the “Bureaus”) announce a limited, supplemental auction filing window for certain AM station construction permit applications.<sup>1</sup> The filing window will open on October 1, 2007, and close on October 5, 2007.<sup>2</sup> In connection with this window, the MB also announces that it will dismiss AM expanded band minor change construction permit applications filed between October 1, 2007, and October 5, 2007.<sup>3</sup>

On August 22, 2006, the Commission released a *Memorandum Opinion and Order* directing the MB to open a limited filing window to permit the filing of applications for a new AM station on 1700 kHz in a community located in Rockland County, New York.<sup>4</sup> The Commission found that significant public safety factors warranted a divergence from the AM expanded band licensing

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<sup>1</sup> See *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, 15925-28 (1998) (“*Broadcast First Report and Order*”), granted in part and denied in part, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), modified, Memorandum Opinion and Order, 14 FCC Rcd 14521 (1999) (determining it appropriate to subject mutually exclusive major modification applications to competitive bidding).

<sup>2</sup> See *Broadcast First Report and Order*, 13 FCC Rcd at 15972-74 (granting the Bureaus authority to open filing windows and schedule auctions in a flexible manner to accommodate the circumstances unique to each service and best promote the efficiency of the broadcast application and auction process).

<sup>3</sup> See *infra* Application Freeze p. 3.

<sup>4</sup> *Alexander Broadcasting, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 9968 (2006) (“*Alexander*”).

procedures,<sup>5</sup> but that Section 309(b) of the Communications Act of 1934, as amended,<sup>6</sup> and the *Ashbacker*<sup>7</sup> doctrine required that an opportunity be provided for the filing of competing applications.

**Scope / Technical Requirements:** This limited, supplemental window is available for proposals for new AM stations and major modifications to authorized AM facilities, as defined in Section 73.3571(a)(1) of the Commission's Rules (the "Rules"), to operate on 1700 kHz.<sup>8</sup> To ensure that the AM station will serve the critical public safety needs of those residents within the Indian Point Emergency Planning Zone designated by emergency authorities, the Commission mandated that applicants specify a community of license in Rockland County, New York.<sup>9</sup> In addition, the proposed AM facilities must, at a minimum, provide service to (*i.e.*, place a daytime 2.0 mV/m contour and a nighttime interference free contour) over more than 50 percent of the persons residing in the Rockland County portion of the Indian Point Emergency Planning Zone.

Proposals must comply with current AM expanded band technical rules. The Rules require AM expanded band applications to specify Model 1 facilities.<sup>10</sup> Section 73.14 of the Rules<sup>11</sup> defines a Model 1 facility as a station operating in the 1605-1705 kHz band and featuring fulltime operation with stereo, competitive technical quality, 10 kW daytime power, 1 kW nighttime power, and a non-directional antenna (or a simple directional antenna system).<sup>12</sup> MB anticipates that the proposed site will be located within the standardized coordination distance of 500 kilometers of the United States - Canada border. As such, the prevailing applicant's proposal will be subject to the coordination provisions contained in the 1990 Agreement Between the Government of Canada and the Government of the United States of America Relating to the AM Broadcasting Service in the Band 1605 to 1705 kHz.<sup>13</sup>

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<sup>5</sup> AM expanded band stations operate on one of the ten channels in the 1605-1705 kHz band. *See* 47 C.F.R. § 73.30. Subsection (b) of the AM expanded band processing rule, 47 C.F.R. § 73.30(b), requires the Commission to license stations in the AM expanded band based on the extent to which the abandonment of the station's lower band facility would yield the greatest interference reduction improvements.

<sup>6</sup> 47 U.S.C. § 309(b).

<sup>7</sup> *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

<sup>8</sup> *See* 47 C.F.R. § 73.3571(a)(1) for the AM broadcast station major change definition. *See also* 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, First Report and Order, 14 FCC Rcd 5272 (1999) (Commission reclassified certain AM technical changes, such as modifications in power, antenna height or antenna location, hours of authorized operation, or the addition of nighttime service, as minor); *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) (Commission reclassified certain community of license changes as minor).

<sup>9</sup> *Alexander*, 21 FCC Rcd at 9972. A portion of Rockland County lies within the Indian Point Emergency Planning Zone, a federally designated area within a ten-mile radius of the Indian Point nuclear power energy generation facility. The Indian Point nuclear facility is located in Buchanan, New York, on the east bank of the Hudson River in Westchester County, close to portions of Rockland, Putnam and Orange Counties.

<sup>10</sup> *See* 47 C.F.R. § 73.30(c).

<sup>11</sup> 47 C.F.R. § 73.14.

<sup>12</sup> The Commission did not waive this requirement. *Alexander*, 21 FCC Rcd at 9972.

<sup>13</sup> An electronic version of this agreement, entitled Interim Working Arrangement Between the Federal Communications Commission and the Department of Communications Relating to the AM Broadcasting Service in the Medium Frequency Band, can be found at: <http://www.fcc.gov/ib/sand/agree/files/can-bc/16051705.pdf>.

No consideration will be given to any application that fails to comply with these technical requirements and the application will be dismissed. Proposals submitted in the supplemental filing window must protect all AM minor change applications filed before October 1, 2007.

Pursuant to Section 309(j) of the Communications Act and the policies established in the *Broadcast First Report and Order*, if mutually exclusive applications are accepted for a construction permit, such authorization will be awarded by competitive bidding.<sup>14</sup> Accordingly, we will require the use of competitive bidding procedures if any mutually exclusive applications are filed within the supplemental window. The initial filing window for AM Auction 84 has been completed,<sup>15</sup> and the staff has made determinations of application mutual exclusivity.<sup>16</sup> Therefore, to the extent mutually exclusive applications are filed in this supplemental window, they will be consolidated with the other pending mutually exclusive AM groups and included in AM Auction 84. The Bureaus will establish an Auction 84 auction date and auction procedures by subsequent public notice. Consistent with procedures established for Auction 84, where appropriate, the staff will permit settlements or technical amendments with respect to applications received pursuant to this *Public Notice* in accord with Section 73.5002 of the Rules.<sup>17</sup>

**Application Freeze.** AM minor modification applications are governed by first come/first served processing procedures and generally may be filed at any time.<sup>18</sup> However, to avoid the possibility of mutual exclusivity with new and major change applications submitted during this supplementary auction filing window, the MB will institute a temporary freeze on the filing of AM expanded band minor change applications at 12:01 a.m. Eastern Time (“ET”), October 1, 2007.<sup>19</sup> The freeze will remain in effect until the close of this supplemental window. AM expanded band minor change applications filed during this freeze will be dismissed.

**Participation.** All applicants for new or major modification of authorized facilities must:

- **File electronically a short-form application (FCC Form 175)** prior to 6:00 p.m. on Friday, October 5, 2007. See Attachment A for more information regarding the completion and electronic filing of an FCC Form 175, including information on the broadcast new entrant bidding credit and the required attachments.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

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<sup>14</sup> See 47 U.S.C. § 309(j); *Broadcast First Report and Order*, 13 FCC Rcd at 15923-25 ¶¶ 7-12, 15978-80 ¶¶ 149-154. See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2376 ¶ 165 (1994).

<sup>15</sup> *AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze*, Public Notice, 18 FCC Rcd 23016 (MB/WTB 2003). The window opened on January 26, 2004, and closed on January 30, 2004.

<sup>16</sup> *AM Auction No. 84 Mutually Exclusive Applicants Subject to Auction*, Public Notice, 20 FCC Rcd 10563 (2005).

<sup>17</sup> 47 C.F.R. § 73.5002(c) and (d) (applicants in mutually exclusive AM application groups which include either (1) at least one AM major modification application, or (2) at least one noncommercial educational application, are provided a limited opportunity to resolve their mutual exclusivities by submitting settlement agreements or technical amendments to the Commission).

<sup>18</sup> 47 C.F.R. § 73.3571(f).

<sup>19</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15989.

No consideration will be given to any proposal for which the required engineering information is not on file by the close of the window. No application filing fee is required at this time.

**Application Processing.** After the close of the window, the Commission will make mutual exclusivity determinations with regard to all timely and complete filings. The Commission will issue a public notice identifying mutually exclusive applications received during the window.<sup>20</sup> If applicable, this 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 settlements for eligible applicants.<sup>21</sup> Technical amendments submitted by applicants to resolve such conflicts must be minor, as defined by the applicable rules of the AM service, and must not create any new mutual exclusivity or other application conflict. No amendments to the supplemental filing window application, technical or otherwise, will be accepted between the close of the application filing window and the release of the public notice listing the mutually exclusive applications. Eligible applicants may only file a technical amendment during the specified settlement period.

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, including identifying those short-form applications with minor defects that may be corrected.

An applicant identified as non-mutually exclusive will be instructed to submit a complete long-form application (FCC Form 301) and filing fee, if required, within 30 days.<sup>22</sup> No amendments to a supplemental filing window “singleton” application, technical or otherwise, will be accepted after the close of the filing window. The complete FCC Form 301 non-mutually exclusive application will be processed and the MB will issue a CDBS-generated public notice listing the application as acceptable for filing. Petitions to deny must be filed within 10 days of the pertinent public notice.<sup>23</sup>

As discussed further in Attachment A, applicants will not be permitted to make major modifications to the FCC Form 175.<sup>24</sup>

The collusion prohibition set forth in Section 1.2105(c) of the Rules<sup>25</sup> applies to applicants submitting applications in this supplemental AM new and major modification auction filing window.<sup>26</sup>

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<sup>20</sup> All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. *See* 47 C.F.R. § 73.3571(h)(2). In determining mutual exclusivity among the AM applications, the staff will apply 47 C.F.R. §§ 73.37, 73.182, 73.183(b)(1). *See also Nelson Enterprises, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 3414 (2003) (application of AM interference standards to establish mutual exclusivity between window-filed applications); *Review of the Technical Assignment Criteria for the AM Service*, Report and Order, 6 FCC Rcd 6273, 6356 (1991), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 8 FCC Rcd 3250 (1993) (“*AM Improvement Order*”).

<sup>21</sup> 47 C.F.R. § 73.5002(c)(1) and (d)(1).

<sup>22</sup> *See* 47 C.F.R. § 73.3571(h)(3).

<sup>23</sup> *See* 47 C.F.R. § 73.5006(b).

<sup>24</sup> *See* 47 C.F.R. § 1.2105(b).

<sup>25</sup> 47 C.F.R. § 1.2105(c).

<sup>26</sup> *See* 47 C.F.R. § 1.2105(c) and 73.5002(d) (collectively, the “Anti-Collusion Rules”).

To ensure the competitiveness and integrity of the auction process, the Anti-Collusion Rules prohibit competing applicants from communicating with each other about bids, bidding strategies, or settlements, which may include communications regarding the post-auction market structure, 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). As further detailed in Attachment A to this public notice, this prohibition becomes effective at the FCC Form 175 filing deadline and ends at the down payment deadline after the auction, which will be announced in a future public notice. AM applicants permitted to resolve their mutual exclusivities may communicate with each other in accordance with Section 73.5002(c) and (d)<sup>27</sup> as specified in a public notice issued pursuant thereto only during the settlement period that will be specified in a forthcoming public notice.<sup>28</sup>

For additional information, contact Susan Crawford, Ann Gallagher, or Lisa Scanlan at the Audio Division, Media Bureau at (202) 418-2700.

**Attachment A:** Short-Form Application (FCC Form 175) Preparation and Submission

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<sup>27</sup> 47 C.F.R. § 73.5002(c) and (d).

<sup>28</sup> See 47 C.F.R. § 73.5002(d).