



PUBLIC NOTICE

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DA 08-1681

July 31, 2008

AUCTION OF LPTV AND TV TRANSLATOR DIGITAL COMPANION CHANNELS SCHEDULED FOR NOVEMBER 5, 2008

SETTLEMENT PERIOD EXTENDED TO AUGUST 14, 2008

AU Docket No. 08-22

Report No. AUC-08-85-E (Auction 85)

On July 17, 2008, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”) (collectively, the “Bureaus”) announced an auction of construction permits for Low Power Television (LPTV), including Class A Television (TV), and TV Translator digital companion channels (Auction 85) scheduled to commence on November 5, 2008, and sought comment on procedures for conducting Auction 85.¹ The *Auction 85 Comment Public Notice* also announced a two-week settlement period beginning July 17, 2008 and ending at 6:00 PM Eastern Time (ET) on Thursday, July 31, 2008. The prohibition of collusion set forth in sections 1.2105(c) and 73.5002(d) of the Commission’s rules has been temporarily lifted during this limited period to allow parties with proposals in the mutually exclusive (MX) groups identified in that Public Notice to dismiss their proposals, enter into settlement agreements or otherwise resolve their mutual exclusivities by means of engineering solutions.²

On July 25, 2008, the National Translator Association (NTA) submitted a request to extend the Auction 85 settlement period until September 8, 2008.³ NTA contends that Auction 85 applicants have not had sufficient time to allow for the negotiation of potential settlements and the preparation of necessary engineering and legal documents to be filed by July 31, 2008.⁴ NTA also notes that the settlement window is occurring during summer months, giving rise to difficulties in coordinating among parties.⁵ NTA submits that “it is in the public interest for the Commission to encourage as many settlements as possible” and suggests that settlements may allow some stations to construct and begin operation in advance of the February 17, 2009 transition date for full-power TV stations.

¹ See “Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008, Announcement of Settlement Period Ending July 31, 2008, Comment Sought on Competitive Bidding Procedures for Auction 85,” *Public Notice*, DA 08-460 (rel. July 17, 2008) (*Auction 85 Comment Public Notice*).

² 47 C.F.R. §§ 1.2105(c), 73.5002(d).

³ See National Translator Association’s Request for Extension of Settlement Period filed July 25, 2008 (NTA Request).

⁴ NTA Request at 1.

⁵ *Id.*

NTA has not demonstrated that an extension of the settlement period until the second week in September is warranted, and NTA's request for a lengthy extension until the second week of September would adversely impact the schedule for Auction 85.⁶ NTA's Request presents no showing that any specific party with a mutually exclusive proposal in Auction 85 will be unable to complete the necessary documentation by the current deadline despite exercising due diligence. We note also that no applicant has filed a request for an extension of the settlement period. The Bureaus previously provided digital companion channel applicants with a 60-day window for settlements and that many parties took advantage of that opportunity to negotiate settlement with other applicants.⁷ While summer vacation schedules may give rise to difficulties in coordination, the Commission has scheduled Auction 85 to start on November 5, 2008 in order to help facilitate the transition of the Low Power Television Service to digital service. The Commission is committed to the goal of facilitating a timely and smooth digital transition.⁸ The DTV transition will be facilitated by allowing parties an opportunity to resolve their mutual exclusivities and then conducting Auction 85 as scheduled on November 5, 2008.

While we deny NTA's request for a lengthy extension, we nevertheless conclude that a brief, two-week extension of the Auction 85 settlement period may be accommodated without disruption to the auction schedule. Such extension will permit additional parties to complete their documentation and will help to avoid incomplete filings. Therefore, the Auction 85 settlement period is extended to **August 14, 2008 at 6:00 PM Eastern Time (ET)**. The parties must submit their requests for dismissal or settlement agreements (including affidavits required by Section 73.3525) and/or engineering submissions by the deadline on August 14, 2008, following the procedures described in the *Auction 85 Comment Public Notice*. Further instructions on the filings of settlements, dismissals and engineering submissions are contained in the *Auction 85 Comment Public Notice* at pages 4-6 and Appendix B.

For further information, contact Shaun A. Maher, Video Division, Media Bureau, at 202-418-1600 or Shaun.Maher@fcc.gov. TTY: (202) 418-0432.

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⁶ It is the Commission's policy that requests for extension are not routinely granted. *See* 47 C.F.R. § 1.46.

⁷ "LPTV and TV Translator Digital Companion Channels Mutually Exclusive Proposals; Announcement of 60-Day Settlement Period Ending December 15, 2006," *Public Notice*, Report No. AUC-06-85-C (Auction No. 85), 21 FCC Rcd 11720 (WTB/MB 2006). *See also* "LPTV and TV Translator Digital Companion Channel Applications Non-Mutually Exclusive Proposals (Auction No. 85)," *Public Notice*, DA 06-1748, 21 FCC Rcd 9830 (MB Video Div. 2006).

⁸ NTA Request at 1. We also disagree with NTA's general assertion that "it is in the public interest for the Commission to encourage as many settlements as possible." *Id.* The Commission has not concluded as a general matter that allowing settlement between mutually exclusive applicants best serves the public interest. Under Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), the Commission determines on a service-specific basis whether and to what extent it would promote the public interest to use negotiation, settlement, or other mechanisms that avoid mutual exclusivity. *See DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997); *Benkelman Telephone Co. v. FCC*, 220 F.3d 601 (D.C. Cir. 2000). *See also* 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, 8755-58 ¶¶ 61-64 (1999).