



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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WASHINGTON, D.C. 20554

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October 9, 2009

Supplemental AM Auction 84 Mutually Exclusive Applicants Subject to Auction

Settlement Period Announced

On August 22, 2006, the Commission released a *Memorandum Opinion and Order* directing the opening of 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.¹ On August 30, 2007, the Media Bureau and the Wireless Telecommunications Bureau (collectively, the “Bureaus”) announced a five-day period, from October 1 to October 5, 2007, for the filing of applications for new AM stations and major modifications to authorized AM stations for Rockland County, New York.² By this Public Notice, the Bureaus list, in Attachment A, all applications received during the supplemental filing window that are mutually exclusive with other applications submitted in the filing window (“Supplemental 84 MX Applications”).³ Accordingly, these four applications are subject to the Commission’s competitive bidding procedures.⁴

¹ *Alexander Broadcasting, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 9968 (2006) (“*Alexander MO&O*”).

² “*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*,” Public Notice, 22 FCC Rcd 16217 (2007) (“*Supplemental AM Window Public Notice*”).

³ In determining mutual exclusivity, the staff applied the following rule sections: 47 C.F.R. §§ 73.37, 73.182, 73.183(b)(1). See also *Review of the Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, 6 FCC Rcd 6273 (1991), *recon granted in part and denied in part*, Memorandum Opinion and Order, 8 FCC Rcd 3250 (1993), and *Nelson Enterprises, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 3414 (2003) (clarifying standards to establish mutual exclusivity between window-filed AM applications).

⁴ See 47 U.S.C. § 309(j); 47 C.F.R. § 73.5000(a); see generally *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920 (1998) (“*Broadcast First Report and Order*”), *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

By this Public Notice, the Bureaus announce a settlement period for the Supplemental 84 MX Applications. The deadline for filing settlement agreements and technical showings is **December 9, 2009**.

Anti-Collusion Rule. The prohibition against certain communications among applicants set forth in Section 1.2105(c) of the Commission's Rules (the "Rules") becomes effective upon the filing of FCC Form 175, Application to Participate in an FCC Auction, and applies to all broadcast service auctions.⁵ However, in certain circumstances, the Commission will allow a limited opportunity to settle, or otherwise resolve mutual exclusivities by means of engineering solutions, following filing of the FCC Form 175 applications.⁶ Specifically, pursuant to Section 73.5002(d) of the Rules, 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 ("NCE") application, will be provided a limited opportunity to resolve their mutual exclusivities and may submit settlement agreements or technical amendments to the Commission during the period that commences with the release of this public notice and ends December 9, 2009.⁷ Once this settlement period is completed, the anti-collusion restrictions will again take effect for such applicants. All four of the Supplemental 84 MX Applications listed in Attachment A are eligible for settlement under Section 73.5002(d).

Settlement Agreements. Applicants permitted to resolve their mutual exclusivities through settlement must ensure that their settlement agreements comply with the provisions of Section 311(c) of the Communications Act of 1934, as amended (the "Act"), and the pertinent requirements of Section 73.3525 of the Rules, including, *inter alia*, reimbursement restrictions.⁸ Applicants must submit a joint request for approval of settlement and a copy of the settlement agreement. Each party to the settlement must submit the affidavits required by 47 C.F.R. § 73.3525(a).⁹ Consistent with action taken on previously-filed AM Auction 84 mutually exclusive applications eligible for settlement, and in the interest of expediting new AM service to Rockland County, New York, the Commission will accept both universal (in which all applicants in the particular MX Group participate) and non-universal settlements.

The surviving applicant in the settlement must also submit a complete FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, for the pertinent application,¹⁰ and must simultaneously submit the required Form 301 application fee and a Form 159, Remittance Advice.¹¹

⁵ See 47 C.F.R. § 1.2105(c), 73.5002(d).

⁶ See *Broadcast First Report and Order*, 13 FCC Rcd at 15927, 15980-81. See also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) ("NCE Second Report and Order").

⁷ See 47 C.F.R. § 73.5002(c) and (d).

⁸ See 47 U.S.C. § 311(c); 47 C.F.R. § 73.3525.

⁹ See 47 C.F.R. § 73.3525(a). Affidavits must be executed by the applicant, permittee, or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association. See 47 C.F.R. § 73.3525(f). An applicant that unilaterally dismisses its application without having entered into a settlement agreement with another applicant must also submit an affidavit stating whether consideration has been promised to or received by such applicant in connection with its dismissal. See 47 C.F.R. §§ 73.3525(c), 73.3568.

¹⁰ See *infra* "Filing Procedures."

¹¹ See schedule of charges at 47 C.F.R. § 1.1104. Method and forms of payment are addressed in 47 C.F.R. §§ 1.1109, 1.1110. See also the Media Services Application Fee Filing Guide and the FCC Form 301 instructions.

Technical Resolutions. Applicants that are permitted to resolve their mutual exclusivities by means of engineering solutions, described *supra*, may do so by submitting a complete FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, for the pertinent application(s). Applicants must simultaneously submit the required Form 301 application fee and Form 159, Remittance Advice.¹² The application must resolve all technical conflicts between it and all other applications in the MX group. An applicant submitting a Form 301 application to resolve a mutual exclusivity by means of an engineering solution may change the technical proposal specified in its previously submitted Form 175 application, but such change must be minor, as defined by the applicable AM service rules, and must not create new application conflicts.¹³ Form 301 applications that create new application conflicts will be returned. The Commission will accept non-universal technical amendments. Engineering solutions must be filed on or before December 9, 2009.

The Commission imposed certain technical requirements on proposals submitted in the Supplemental AM Auction 84 window. For example, 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.¹⁴ In addition, the Commission ordered that 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 were also required to comply with current AM expanded band technical rules, such as the specification of Model 1 facilities.¹⁵ While an applicant submitting a Form 301 application to resolve mutual exclusivity by means of an engineering solution may change the technical proposal specified in its previously submitted Form 175 application, such an engineering solution must comply with all Commission-mandated technical requirements, as directed in the *Alexander MO&O*.

Section 307(b) Determination. In the *Broadcast First Report and Order*, the Commission determined that its competitive bidding authority should be harmonized with its statutory duty under Section 307(b) of the Act, to effect an equitable distribution of radio stations throughout the United States.¹⁶ Therefore, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications proposing to serve different communities.

¹² See *supra* note 11.

¹³ See 47 C.F.R. § 73.3571.

¹⁴ *Alexander MO&O*, 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.

¹⁵ See 47 C.F.R. § 73.30(c). Section 73.14 of the Rules 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). 47 C.F.R. § 73.14. The Commission did not waive this requirement. *Alexander MO&O*, 21 FCC Rcd at 9972.

¹⁶ See *Broadcast First Report and Order*, 13 FCC Rcd at 15964.

However, to ensure that the new AM station will meet the fundamental safety and informational needs of Rockland County residents, applicants filing in the supplemental window were required to specify a community of license in Rockland County, New York.¹⁷ Because the specific geographic and service conditions imposed by the Commission in the *Alexander MO&O* fulfill the Section 307(b) statutory mandate,¹⁸ we will not apply a threshold Section 307(b) analysis for the mutually exclusive application group listed in Attachment A to this Public Notice. Accordingly, no applicant listed in Attachment A should submit a Section 307(b) analysis of its respective proposal. Section 307(b) analyses that are submitted will not be considered and will be returned.

Filing Procedures. Joint requests for approval of any **settlement agreement** must be filed in original and two copies, plus one additional copy for each applicant that is a party to the settlement, **on or before December 9, 2009**, with the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W. Room TW-A325, Washington, D.C. 20054. In addition, it is requested that a courtesy copy of all such filings be delivered to Shannon Hyatt, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-B450, Washington, D.C. 20554.

All **FCC Form 301 applications** must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms filing system. When filing the complete FCC Form 301, applicants must select "Long Form Application for Supplemental AM Auction 84" on the Pre-form for Form 301 (Question 2 – Application Purpose). In addition, the CDBS-assigned file number, previously issued to the AM engineering proposal portion of the short form application filed in the Supplemental AM Auction 84 filing window, must be entered on the Pre-form in the field "Eng. Proposal File Number."¹⁹ Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing web site at:

<http://www.fcc.gov/mb/elecfile.html>

The profile information and AM engineering proposals filed with the Supplemental 84 MX Applications are available for review in CDBS. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

The staff will withhold further action on the Supplemental 84 MX Applications in Attachment A, pending submission of settlement agreements or engineering solutions to resolve mutual exclusivity. For additional information, contact Lisa Scanlan, Thomas Nessinger, Susan Crawford or Ann Gallagher of the Audio Division at (202) 418-2700.

This Public Notice contains the following Attachment:

¹⁷ *Alexander MO&O*, 21 FCC Rcd at 9972. See also *supra* note 15.

¹⁸ See 47 U.S.C. § 307(b) (Commission's licensing process necessarily begins with a determination, pursuant to Section 307(b) of the Act, that any proposed FM channel allotment or AM construction permit award comports with the "fair, efficient, and equitable distribution of radio service" among the States and communities).

¹⁹ The CDBS file number issued to the AM engineering proposal portion of the short-form application filed in the Supplemental AM Auction 84 filing window is listed in Attachment A to this Public Notice.

Attachment A: Supplemental 84 MX Applications

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to range from 0.5 to 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on these burden estimates, or on how we can improve the collection(s) and reduce the burden(s) they cause you, please write to Cathy Williams, Federal Communications Commission, AMD-PERM, Room 1-C823, 445 12th Street S.W., Washington, DC 20554, Paperwork Reduction Project (3060-0996). We will also accept your comments regarding the Paperwork Reduction Act aspects of the collection(s) via the Internet if sent to Cathy.Williams@fcc.gov. Please do not send completed applications to this address.

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THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. § 3507.

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