



# PUBLIC NOTICE

**Federal Communications Commission**  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

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

**DA 17-533**

**Released: June 6, 2017**

**FILING INSTRUCTIONS FOR CROSS-SERVICE FM TRANSLATOR AUCTION FILING WINDOW FOR AM BROADCASTERS TO BE OPEN JULY 26 – AUGUST 2, 2017**

**FREEZE ON FM TRANSLATOR AND LOW-POWER FM STATION MINOR CHANGE APPLICATIONS AND FM BOOSTER APPLICATIONS JULY 19 – AUGUST 2, 2017**

**AU Docket No. 17-143**

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## I. GENERAL INFORMATION

### A. Introduction

1. Recently, the Commission announced that the first auction filing window for AM broadcasters seeking new FM translators to implement policies adopted in the AM Revitalization proceeding will open July 26, 2017.<sup>1</sup> The Media Bureau (MB) and the Wireless Telecommunications Bureau (WTB) now announce details and filing instructions for this filing window opportunity to apply for cross-service FM translator station construction permits. A cross-service FM translator rebroadcasts the signal of an AM broadcast station.

2. The first filing window will open on July 26, 2017 and close on August 2, 2017. In the event that FM translator proposals filed during this window are determined to be mutually exclusive (MX) and such MX is not resolved through a future opportunity for settlement or technical amendments, the Commission will resolve those proposals through competitive bidding. This auction will be designated as Auction 99.

3. In connection with this window, MB also announces that it will not accept Low Power FM and FM translator minor change construction permit applications and FM booster construction permit applications between July 19, 2017, and August 2, 2017.

### B. Background

4. In the First Report and Order in the AM Revitalization proceeding,<sup>2</sup> the Commission ordered that MB open two windows for AM stations seeking to acquire and/or modify existing cross-service FM translators, followed by two auction filing windows for AM stations seeking to establish new cross-service FM translators.<sup>3</sup> The two modification windows were opened from January 29-July 28, 2016, and from July 29-October 31, 2016. The completion of those modification windows allowed the Commission to announce the opening of this first cross-service FM translator filing window.<sup>4</sup>

## II. FILING WINDOW OPPORTUNITY OPEN ONLY TO CERTAIN AM LICENSEES AND PERMITTEES

5. Eligibility for this filing window will be limited to any Class C and D AM station licensee or permittee wishing to file an application to establish a new cross-service FM translator to re-transmit its station signal full time, provided that it has not already applied for a cross-service FM translator in either of the 2016 modification windows. During the filing window, a licensee or permittee may propose only one cross-service FM translator for each Class C or D AM primary station to be

<sup>1</sup> *FCC Announces Opening of First Auction Filing Window for AM Broadcasters Seeking New FM Translators*, Public Notice, FCC 17-67 (rel. June 1, 2017) (*FCC Announces FM Translator Filing Window Public Notice*).

<sup>2</sup> *Revitalization of the AM Radio Service*, MB Docket No. 13-249, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145 (2015) (*AMR First R&O*).

<sup>3</sup> *Id.* at 12150-51, para. 12.

<sup>4</sup> *FCC Announces FM Translator Filing Window Public Notice*, FCC 17-67 (rel. June 1, 2017).

rebroadcast. A licensee or permittee whose AM station was listed as the primary station in a modification application filed during one of the two 2016 modification windows is not eligible to apply during this filing window.<sup>5</sup> Any FM translator station acquired through this filing window will not be allowed to rebroadcast any station other than the AM primary station identified in the applicant's FCC Form 349 Tech Box.<sup>6</sup> A second cross-service FM translator auction filing window, which will be open to any AM broadcast licensee or permittee that did not participate in either of the modification windows or in this filing window, will be announced at a later date.<sup>7</sup>

6. An applicant may designate any non-reserved FM channel (Channels 221-300, 92.1-107.9MHz) for its proposed cross-service FM translator. Applicants are reminded that, although the Commission has recently relaxed the rule regarding siting of cross-service FM translators,<sup>8</sup> such translators provide fill-in service only. Under revised Section 74.1201(g) of the Commission's rules, the coverage contour of a fill-in FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the greater of either the 2 mV/m daytime contour of the AM station or a 25-mile (40 km) radius centered at the AM transmitter site.<sup>9</sup> The protected contour for an FM translator station is its predicted 1 mV/m contour.<sup>10</sup>

### **III. FREEZE ON CERTAIN FM TRANSLATOR, LOW POWER FM STATION AND FM BOOSTER APPLICATIONS**

7. MB will institute a temporary freeze on the acceptance of FM booster construction permit applications, minor change FM translator applications, and minor change Low Power FM applications on all channels (channels 201-300) at 12:01 a.m. Eastern Time (ET), July 19, 2017. The freeze shall remain in effect until the close of this initial cross-service FM translator filing window. Any such applications filed during this freeze will be dismissed.

### **IV. APPLYING FOR A CROSS-SERVICE FM TRANSLATOR IN THIS FILING WINDOW**

8. A licensee or permittee seeking a new cross-service FM translator for its AM station(s), must file FCC Form 349 Tech Box for a permit for each such proposed facility as well as one FCC Form 175 covering all proposed station(s) for which it files a FCC Form 349 Tech Box. This section provides an overview of the application filing requirements for applicants seeking a new cross-service FM translator.

#### **A. Application for Authority to Construct or Make Changes in a FM Translator or FM Booster Station (FCC Form 349 Tech Box)**

9. Each AM station licensee or permittee applicant for a new FM translator station must file electronically for each proposed FM translator an FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, in the Media Bureau's Consolidated Database System (CDBS) between 12:01 a.m. ET, July 26, 2017, and prior to 6:00 p.m. ET, August 2, 2017. Only Section I, the Tech Box of Section III-A, and the Section VI Certification must be completed at this time. Such engineering information will be used to make mutual exclusivity determinations. See Attachment A for instructions on the completion and electronic filing of Form 349 in CDBS.

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<sup>5</sup> *AMR First R&O*, 30 FCC Rcd at 12153-54, para. 17.

<sup>6</sup> *Id.* at 12154, para. 17.

<sup>7</sup> *Id.* at 12153, para. 17.

<sup>8</sup> *Revitalization of the AM Radio Service*, MB Docket No. 13-249, Second Report and Order, 32 FCC Rcd 1724, 1726-27, para. 4 (2017).

<sup>9</sup> 47 CFR § 74.1201(g).

<sup>10</sup> *Id.*

10. An entity that is the permittee or licensee of more than one AM station may apply for a cross-service FM translator for each of its stations provided that it submits a separate Form 349 for each proposed cross-service FM translator station. However, each eligible AM station licensee/permittee applicant may propose only one cross-service FM translator to provide fill-in service for a particular AM station. Moreover, a cross-service FM translator awarded through the FM translator auction window will only be authorized to rebroadcast the AM primary station specified in the FCC Form 349 proposal (or to originate nighttime programming during periods when a daytime-only AM primary station is not operating), on a permanent basis, and the authorization for such an FM translator station will be subject to a condition that it may not be assigned or transferred except in conjunction with the primary AM station that it re-broadcasts and with which it is commonly owned.<sup>11</sup> Applicants are reminded to review each Tech Box submission carefully for compliance with Section 74.1201(g) and all other Commission technical rules relating to FM translator stations, as well as insuring that only one Form 349 is submitted for each qualified AM station.

## **B. Short-Form Auction Application (FCC Form 175)**

### **1. General Information Regarding Short-Form Applications**

11. Each AM station licensee or permittee applicant for a new FM translator station must file electronically an FCC Form 175, an Application to Participate in an Auction, prior to 6:00 p.m. ET on August 2, 2017.<sup>12</sup> See Attachment B for more information regarding the completion and electronic filing of Form 175.

### **2. Each Applicant May File Only One FCC Form 175**

12. Section 1.2105(a)(3) of the Commission's rules prohibits the filing of more than one short-form application (FCC Form 175) by the same individual or entity for an auction.<sup>13</sup> An individual or entity may therefore not submit more than one Form 175 during this filing window, regardless of the number of Forms 349 it files.

13. Although Section 1.2105(a)(3) of the Commission's rules also prohibits the filing of more than one Form 175 in an auction by entities with any of the same controlling interests, we *sua sponte* waive this prohibition and will permit applicants controlled by the same individual or set of individuals to file multiple short-form applications due to the specific eligibility provisions and filing procedures for this auction window.<sup>14</sup> The Commission's cross-service FM translator opportunity is

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<sup>11</sup> *AMR First R&O*, 30 FCC Rcd at 12154, para. 17. See also *Revitalization of the AM Radio Service*, Notice of Proposed Rule Making, 28 FCC Rcd 15221, 15227, para. 14 (2013).

<sup>12</sup> The FCC Form 175 is a streamlined application filed by parties seeking to participate in an auction that provides information used by Commission staff to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. See 47 CFR § 1.2105; see also *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, FCC 94-61, 9 FCC Rcd 2348, 2376, para. 165 (1994) (*Competitive Bidding Second Report and Order*). An applicant's eligibility to participate in the auction process is based on the information provided in its FCC Form 175 and required certifications as to the applicant's qualifications, and compliance with all provisions outlined in this public notice and applicable rules of the Commission.

<sup>13</sup> See 47 CFR § 1.2105(a)(3); see also *Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Docket No. WT 14-170, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, FCC 15-80, 30 FCC Rcd 7493, 7579, para. 205 (2015) (*Part 1 R&O*) (modified by Erratum, DA 15-959 (rel. Aug. 25, 2015)).

<sup>14</sup> See 47 CFR §§ 1.3 and 1.925(a). In addition to prohibiting the same individual or entity from filing more than one short-form application in any auction, Section 1.2105(a)(3) bars multiple short-form applications by applicants

expressly limited to eligible AM permittees and licensees, and does not provide for auction applications to be filed by any other parties.<sup>15</sup> The principal underlying purpose of Section 1.2105(a)(3)'s prohibition on the filing of applications by applicants with overlapping controlling interests, which is to ensure that auction participants bid in a straightforward manner, is not implicated in these unusual circumstances.<sup>16</sup> There is little risk to the competitiveness of the FM translator auction for which these applications will be filed – should one need to be held at all – by allowing for multiple applications by licensees that are commonly controlled. In contrast to an auction of permits for tabled services or for geographic area licenses in which a single applicant may apply for and bid on multiple pre-defined permits or licenses, this AM revitalization cross-service FM translator opportunity allows an existing AM licensee or permittee to propose a single cross-service FM translator for each Class C or D AM primary station to be rebroadcast and such proposals would be resolved by competitive bidding only if mutual exclusivity arises. Commonly controlled AM licensees or permittees can be expected to file proposals and to engineer their proposals to avoid mutual exclusivity, and thus, would not be bidding on the same permits should they need to engage in the bidding process. While the Commission's competitive bidding rules permit commonly controlled entities to file a single short-form application, subject to bidding agreements with the other non-applicant licensees under common control,<sup>17</sup> requiring commonly controlled FM translator applicants to file a single Form 175 would impose burdens likely to be much greater than any benefit to the competitiveness of the auction, particularly since the eligibility restrictions established by the Commission for this cross-service FM translator opportunity make mutually exclusive applications unlikely.<sup>18</sup> For all of these reasons, for applicants in this filing window, we waive the prohibition in Section 1.2105(a)(3) on the filing of more than one Form 175 by entities with any of the same controlling interests, but will continue to apply the prohibition on the filing of more than one short-form application by the same individual or entity.

### 3. Authorized Bidders

14. An applicant must designate at least one authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.<sup>19</sup> Accordingly, the same individual may not be listed as an authorized bidder in more than one FCC Form 175.

### 4. Disclosure of Agreements Relating to Permits Subject to Auction

15. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia, or agreements, arrangements, or understandings of any kind relating to the FM translator permits that may be subject to auction, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permits or licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a

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controlled by the same individual or set of individuals. 47 CFR § 1.2105(a)(3). For this purpose, the rule defines control as *de jure* or *de facto* control. See 47 CFR § 1.2105(a)(4)(i) (definition and examples of "controlling interest"). This prohibition applies without regard to the construction permits or licenses selected by an applicant. See *Part 1 R&O*, 30 FCC Rcd at 7580, para. 206.

<sup>15</sup> *AMR First R&O*, 30 FCC Rcd at 12153, para. 17.

<sup>16</sup> See *Part 1 R&O*, 30 FCC Rcd at 7580, para. 206.

<sup>17</sup> See 47 CFR §§ 1.2105(a)(2)(viii) (disclosure of bidding agreements), 1.2105(a)(4)(ii–iii) (definitions of consortium and joint venture).

<sup>18</sup> Such burdens on AM licensees might include the administrative costs of entering into bidding agreements and post-auction transactional costs.

<sup>19</sup> See 47 CFR § 1.2105(a)(2)(iii); see also *Part 1 R&O*, 30 FCC Rcd at 7577, para. 200.



party.<sup>20</sup> In connection with the agreement disclosure requirements, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understanding into which it has entered.<sup>21</sup>

16. An applicant may continue negotiating, discussing, or communicating with respect to a new agreement after the FCC Form 175 filing deadline, provided that the communications involved do not relate either to the construction permits being auctioned and to bids or bidding strategies or post-auction market structure. An applicant that enters into any agreement relating to the construction permits being auctioned during the auction is subject to the same disclosure obligations as it would be for agreements existing at the FCC Form 175 filing deadline and must maintain the accuracy and completeness of the information in its pending auction application.<sup>22</sup>

17. As recently amended, the Commission's rules now generally prohibit any joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by such applicants).<sup>23</sup>

18. Each auction applicant must certify on its behalf and on behalf of any party that controls, or is controlled by the applicant, that the applicant has not entered into and will not enter into any joint bidding arrangement with any other auction applicant(s), other than an agreement that falls within the limited exceptions in section 1.2105(a).

19. For more information regarding agreement disclosure requirements and joint bidding arrangements/agreements, applicants should review the *Part 1 Report and Order*.<sup>24</sup>

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<sup>20</sup> 47 CFR §§ 1.2105(a)(2)(viii), (a)(4). As defined for purposes of this rule, a controlling interest includes all individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. See 47 CFR § 1.2105(a)(4)(i).

<sup>21</sup> 47 CFR § 1.2105(a)(2)(viii). For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175 pursuant to section 1.2105(a)(2)(viii) and (c)(1), even if the agreement has not been reduced to writing. However, if the parties have not agreed in principle by the FCC Form 175 filing deadline, they should not describe, or include the names of parties to, the discussions on their applications. See generally *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, DA 95-2244, 11 FCC Rcd 9645, 9646 (WTB 1995) (*Anti-Collusion Public Notice*) (standard for determining when a disclosable agreement exists, discussed in connection with an earlier version of 47 CFR § 1.2105).

<sup>22</sup> See 47 CFR §§ 1.65, 1.2105(b)(4); see also *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, AU Docket No. 14-252, Public Notice, DA 15-1129, 30 FCC Rcd 10794 (WTB 2015) (*Prohibited Communications Public Notice*).

<sup>23</sup> See 47 CFR § 1.2105(a)(3), (a)(4)(i), (b)(1)(ii); see also *Part 1 R&O*, 30 FCC Rcd at 7569-77, paras. 177-198. For purposes of the prohibition on joint bidding arrangements, "joint bidding arrangements" include arrangements relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangements relating to the post-auction market structure. This general prohibition against joint bidding arrangements excludes certain agreements that are solely operational in nature, such as: operational aspects of providing broadcast service or agreements for assignment or transfer of licenses. 47 CFR § 1.2105(a)(2)(ix)(A)-(C). However, these operational agreements must not relate to the construction permits or licenses at auction and cannot address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategy (including the specific construction permits or licenses on which to bid or not to bid), or post-auction market structure.

<sup>24</sup> See *Part 1 R&O*, 30 FCC Rcd at 7569-78, paras. 177-201. See also 47 CFR § 1.2105(a)(2)(ix).

## 5. Ownership Disclosure Requirements for Short-Form Applications

20. Each applicant must comply with the uniform Part 1 ownership disclosure requirements and provide information required by sections 1.2105 and 1.2112, and, where applicable, section 1.2110, of the Commission's rules.<sup>25</sup> Specifically, in completing the FCC Form 175, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in sections 1.2105 and 1.2112, and, where applicable, section 1.2110, of the Commission's rules.<sup>26</sup>

## 6. Foreign Ownership Disclosure Requirements

21. Section 310 of the Communications Act of 1934, as amended, requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses.<sup>27</sup> In completing the FCC Form 175, an applicant will be required to certify that it is in compliance with the foreign ownership provisions contained in Section 310 of the Communications Act of 1934, as amended.<sup>28</sup>

## 7. New Entrant Bidding Credit

22. To promote the objectives of section 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.<sup>29</sup>

23. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit.<sup>30</sup> In this filing window, the bidder's attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline.<sup>31</sup> Each prospective bidder is reminded, however, that events

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<sup>25</sup> Section 1.2105 requires the disclosure on the FCC Form 175 of the applicant's ownership information as set forth in sections 1.2105 and 1.2112. *See* 47 CFR § 1.2105. In addition, each applicant should ensure that its disclosures comply with the ownership disclosure requirements in the recently amended Part 1 rules. *See generally Part 1 R&O*, 30 FCC Rcd at 7493.

<sup>26</sup> 47 CFR §§ 1.2105, 1.2110, 1.2112. For example, 47 CFR § 1.2110 provides particular definitions of controlling interests.

<sup>27</sup> *See* 47 U.S.C. §§ 310(a), (b); *see also Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, FCC 16-128, 31 FCC Rcd 11272 (2016).

<sup>28</sup> *See* 47 CFR § 1.2105(a)(2)(vi).

<sup>29</sup> *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, FCC 98-194, 13 FCC Rcd 15920, 15994-95 para. 189 (1998) (adopting new entrant bidding credit to implement statutory provisions regarding opportunities for small, minority-owned and women-owned businesses).

<sup>30</sup> "Media of mass communications" include both commercial and noncommercial educational (NCE) full-power broadcast stations. *See* 47 CFR § 73.5008. *See also* 47 CFR § 73.3555 Note 2.

<sup>31</sup> *See* 47 CFR § 73.5007(a). An applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests (officer or director), 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 Form 175 filing deadline. If, for example, on August 2, 2017, an auction applicant has a pending or granted application to assign or transfer control of a media interest, the applicant will not avoid attribution with respect to that interest. To avoid attribution, an applicant must have consummated the transaction before the Form 175 filing deadline. 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 deadline. *See* 47 CFR § 73.5007(a).

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.<sup>32</sup>

24. In the *New Entrant Bidding Credit Reconsideration Order*,<sup>33</sup> 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 bidder 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.<sup>34</sup>

25. In the *Diversity Order*, the Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of “eligible entities.”<sup>35</sup> An “eligible entity” is defined in Note 2(i) of section 73.3555.<sup>36</sup> Pursuant to the *Diversity Order*, the Commission will allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided (1) the combined equity and debt in the “eligible entity” is less than 50 percent; or (2) the total debt in the “eligible entity” does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the “eligible entity” or any related entity.<sup>37</sup>

## 8. Provisions Regarding Current and Former Defaulters

26. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in this filing window.<sup>38</sup> Accordingly, each applicant must certify

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<sup>32</sup> 47 CFR § 73.5007(a). The Bureaus remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. 47 CFR § 1.65. See *Vermont Tel. Co., Inc.*, DA 11-1536, Notice of Apparent Liability for Forfeiture, 26 FCC Red 14130 (EB 2011) (“*Vermont Telephone Company*”) (finding Vermont Telephone Company apparently liable for forfeiture in the amount of \$34,000 for failing to submit accurate bidding credit information and failing to maintain the continuing accuracy of bidding credit information in its application for Broadband Radio Service Auction 86).

<sup>33</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, Memorandum Opinion and Order, 14 FCC Red 12541 (1999) (*New Entrant Bidding Credit Reconsideration Order*).

<sup>34</sup> See 47 CFR § 73.5008(c).

<sup>35</sup> *Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Red 5922 (2008) (*Diversity Order*).

<sup>36</sup> 47 CFR § 73.3555, Note 2(i). An “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration’s size standards for its industry grouping, as set forth in 13 CFR § 121.201, and holds (i) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or (ii) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (iii) more than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company. See also 2014 *Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, 31 FCC Red 9864, 9982-83, para. 285 and n.858 (2016) (re-adopting the eligible entity standard for the media attribution rules and New Entrant Bidding Credit after remand by the court).

<sup>37</sup> See 47 CFR § 73.5008(c).

<sup>38</sup> An applicant is considered a “current defaulter” or a “current delinquent” when it, 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



under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency.<sup>39</sup>

27. A former defaulter or delinquent who has remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the Form 175 filing deadline in this auction may participate so long as it is otherwise qualified, if permits it seeks are subject to bidding, and the applicant makes an upfront payment that is fifty percent more than would otherwise be required.<sup>40</sup> For this reason, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described below.<sup>41</sup> For purposes of making these certifications, the term “controlling interest” is defined in section 1.2105(a)(4)(i) of the Commission rules.<sup>42</sup>

28. Under the Commission’s revised rule regarding applications filed by former defaulters, an applicant is considered a “former defaulter” or a “former delinquent” when, as of the FCC Form 175 deadline, it or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies.<sup>43</sup>

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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 auction applications. *See 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 Order, and Fourth Further Notice of Proposed Rule Making, FCC 00-274, 15 FCC Rcd 15293, 15317, para. 42 and n.142 (2000) (“*Part 1 Fifth Report and Order*”)(modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements*, Public Notice, DA 04-3491, 19 FCC Rcd 21920 (WTB 2004) (*Auction Default Disclosure Public Notice*).

<sup>39</sup> See 47 CFR § 1.2105(a)(2)(xi); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42 and n.142 (“If any one of an applicant’s controlling interests or their affiliates . . . is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by section 1.2105(a)(2)(xi). . . and will not be eligible to participate in Commission auctions.”).

<sup>40</sup> 47 CFR §§ 1.2105(a)(2)(xii), 1.2105(b)(1), and 1.2106(a). For purposes of evaluating the certifications under section 1.2105(a)(2)(xi) and (xii), the Bureaus clarify that “non-tax debt owed to any Federal agency” includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund (USF), Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal “agency” under the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant parts at 31 U.S.C. §§ 3716 (administrative offset) and 3717 (interest and penalty on claims)); *see also* 47 CFR §§ 1.1901, 1.1911, 1.1912, 1.1940. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from auction participation under the Commission’s rules. 47 CFR § 1.2105(a)(2)(xi) and (b)(1). If, however, the applicant cures the overdue debt prior to the auction application filing deadline, it may be able to become eligible to participate in this auction as a former defaulter under the Commission’s rules. 47 CFR §§ 1.2105(a)(2)(xii), 1.2106(a).

<sup>41</sup> 47 CFR §§ 1.2105(a)(2)(xii).

<sup>42</sup> 47 CFR § 1.2105(a)(4)(i).

<sup>43</sup> The Commission recently narrowed the scope of the individuals and entities to be considered for purposes of the former defaulter rule. *See* 47 CFR § 1.2105(a)(2)(xii), (a)(4); *see also Part 1 R&O*, 30 FCC Rcd at 7566-68, paras. 173-75. For purposes of the certification under Section 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission license or delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was

29. 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 its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.<sup>44</sup> Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules “are not affected” by the red light rule.<sup>45</sup> As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

30. The Bureaus remind each applicant, however, that the Commission’s Red Light Display system, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant’s ability to comply with the default and delinquency disclosure requirements of section 1.2105.<sup>46</sup> Thus, while the red light rule ultimately may prevent the processing of post-auction applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation. Moreover, a prospective auction applicant should note that any post-auction application filed after the close of bidding will be reviewed for compliance with the Commission’s red light rule,<sup>47</sup> and such review may result in the dismissal of a winning bidder’s post-auction application.<sup>48</sup> We strongly encourage each applicant (including its affiliates, controlling interests, and the affiliates of its controlling interests) to carefully review all records and other federal agency databases and information sources available to it to determine whether the applicant owes or was ever delinquent in the payment of non-tax debt owed to any federal agency.

## 9. Optional Applicant Status Identification

31. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),<sup>49</sup> and rural telephone companies, as defined in section 1.2110(c)(4),<sup>50</sup> may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status

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received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

<sup>44</sup> *Amendment of Parts 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, FCC 04-72, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321(1996)) (*Debt Collection Report and Order*).

<sup>45</sup> *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11 (specifically noting the former defaulter and current defaulter certifications (47 CFR §§ 1.2105(a)(2)(xi) and (xii) respectively) and stating that “[t]hese rules are not affected by the red light rule.”)

<sup>46</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 2191-22 (addressing relationship between Commission’s Red Light Display system and FCC Form 175 default and delinquency disclosure requirements for auction applicants). To access the Commission’s Red Light Display system, go to: <https://apps.fcc.gov/redlight/login.cfm>.

<sup>47</sup> *Debt Collection Report and Order*, 19 FCC Rcd at 6541-42, paras. 3-5; see 47 CFR § 1.1114.

<sup>48</sup> Applicants that have their long-form application (FCC Form 349) dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR §§ 1.2104(g) and 1.2109(c).

<sup>49</sup> 47 CFR § 1.2110(c)(3).

<sup>50</sup> 47 CFR § 1.2110(c)(4).

information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

#### **10. Noncommercial Educational Status Election**

32. In the *NCE Second Report and Order*, the Commission held that applications for noncommercial educational (“NCE”) broadcast stations on non-reserved spectrum will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.<sup>51</sup> Accordingly, if an FCC Form 175 filed during this filing window identifying the application’s proposed FM translator as noncommercial educational is mutually exclusive with any application filed during that window for a commercial station,<sup>52</sup> the NCE application will be returned as unacceptable for filing.<sup>53</sup> For this reason, each prospective applicant in this auction should consider carefully if it wishes to propose NCE operation for any FM translator acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.<sup>54</sup>

#### **11. Modifications to Short-Form Applications**

##### **a. Only Minor Modifications Allowed**

33. After the initial application filing deadline, an applicant will be permitted to make only minor modifications to its short-form application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, and change in the applicant’s selected bidding option (electronic or telephonic). Major modification to an FCC Form 175 application (e.g., change the engineering proposals, change the certifying official, change control of the applicant, change identification of the application’s proposed facilities as noncommercial educational or claim eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline.<sup>55</sup> If an applicant makes a “major amendment,” as defined by section 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application.<sup>56</sup> Questions about FCC Form 175 amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

##### **b. Duty to Maintain Accuracy and Completeness of FCC Form 175**

34. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending application, including a pending application in a competitive bidding proceeding.<sup>57</sup> An applicant must furnish additional or corrected information to the Commission within five days after a significant occurrence,<sup>58</sup> or amend its FCC Form 175 no more than five days after the

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<sup>51</sup> *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, MM Docket No. 95-31, Second Report and Order, FCC 03-44, 18 FCC Rcd 6691, 6699-6701, paras. 21-24 (2003) (*NCE Second Report and Order*). See also 47 CFR § 73.5002(b).

<sup>52</sup> In the *NCE Second Report and Order*, the Commission determined that short-form applications that do not identify the facilities proposed in the FCC Form 175 as “noncommercial educational” will be considered, as a matter of law, applications for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700, para. 22.

<sup>53</sup> *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701, paras. 21-24; see also 47 CFR § 73.5002(b).

<sup>54</sup> 47 CFR § 1.2105(b); see also *NCE Second Report and Order*, 18 FCC Rcd at 6700, para. 22.

<sup>55</sup> See 47 CFR § 1.2105(b)(2).

<sup>56</sup> See *id.* § 1.2105(b); see also *Two Way Radio of Carolina, Inc.*, Memorandum Opinion and Order, FCC 99-189, 14 FCC Rcd 12035 (1999).

<sup>57</sup> See 47 CFR §§ 1.65 and 1.2105(b)(4).

<sup>58</sup> The Bureaus remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. See, e.g., *Vermont Telephone Company*, 26 FCC Rcd at 14130.

applicant becomes aware of the need for the amendment.<sup>59</sup> An applicant's obligation to make modifications to a pending application in order to provide additional or corrected information continues in accordance with the Commission's rules.<sup>60</sup> The Bureau notes that an applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

## C. Prohibition on Communications By Auction Applicants

### 1. Overview

35. The rules prohibiting certain communications set forth in 47 CFR §§ 1.2105(c) and 73.5002(d) and (e) apply to each applicant that files a short-form application in this cross-service FM translator window.<sup>61</sup> Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other . . . in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]"<sup>62</sup>

36. The Commission expressly requires that an applicant establish internal controls to preclude any person or entity with a disclosable interest in more than one applicant in an auction from possessing information about the bids or bidding strategies of more than one applicant and from communicating information that it has about one applicant to another applicant.<sup>63</sup>

37. In addition to Sections 1.2105(c)(1) and 73.5002, as well as this Public Notice, applicants are encouraged to review the guidance on the prohibition of certain communications that was issued in the context of the broadcast incentive auction application process and the authorities referenced in that public notice.<sup>64</sup>

### 2. Entities Subject to Section 1.2105

38. "Applicant" for purposes of this rule includes the officers and directors of the applicant, "all controlling interests in the entity" applying to participate in the auction, as well as all holders of interests amounting to 10 percent or more of the entity.<sup>65</sup> A party that submits an application becomes an "applicant" under the rule at the application deadline and that status does not change based on subsequent developments.<sup>66</sup>

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<sup>59</sup> 47 CFR §§ 1.65, 1.2105(b)(4). See also *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, Order, FCC 10-4, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*). Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs.

<sup>60</sup> See Attachment B for information about submitting modifications to FCC Form 175 after the initial application filing deadline.

<sup>61</sup> 47 CFR §§ 1.2105(c), 73.5002(d), (e).

<sup>62</sup> 47 CFR § 1.2105(c). This rule also prohibits certain communications involving a nationwide provider of communications services.

<sup>63</sup> 47 CFR § 1.2105(c)(2).

<sup>64</sup> *Prohibited Communications Public Notice*, 30 FCC Rcd at 10794.

<sup>65</sup> 47 CFR § 1.2105(c)(5).

<sup>66</sup> See *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008). Thus, an auction applicant that does not correct deficiencies in its application, submit a timely and sufficient upfront payment or does not otherwise become qualified, remains an "applicant" for purposes of the rule and remains subject to the prohibition on certain communications until the applicable deadline.

### 3. Permissible Communications

39. The auction rule prohibiting certain communications does not apply to an applicant's communications regarding any arrangement relating to the construction permits or licenses being auctioned that is excluded from the prohibition on joint bidding, provided such arrangement is disclosed on the applicant's auction application.<sup>67</sup> Arrangements expressly excluded from the rule prohibiting joint bidding include solely operational agreements.<sup>68</sup> Permissible arrangements also include agreements to form consortia or joint ventures that will become the applicant in the auction.<sup>69</sup> Additionally, they include agreements for assignment or transfer of licenses, provided that any such agreement does not both relate to the licenses at auction and address or communicate directly or indirectly bidding at auction (including prices) or bidding strategies (including the specific licenses on which to bid), or post-auction market structure.<sup>70</sup>

40. If mutual exclusivity is determined to exist, the Bureaus will announce a period during which this prohibition may be suspended for the purpose of resolving mutual exclusivity conflicts.<sup>71</sup> Until such time, however, this rule remains in effect.

### 4. Section 1.2105 Certification

41. By electronically submitting their FCC Form 175 short-form applications, applicants are certifying their compliance with 47 CFR Sections 1.2105(c) and 73.5002. However, the mere filing of 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.<sup>72</sup> Any applicant found to have violated these communication prohibitions may be subject to sanctions.<sup>73</sup>

### 5. Reporting Requirement

42. In addition, Section 1.2105(c)(6) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five business days.<sup>74</sup>

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<sup>67</sup> *Part 1 R&O*, 30 FCC Rcd at 7577, para. 199. In contrast, broadcast licensees communicating with each other about non-auction related matters are not required to disclose related agreements.

<sup>68</sup> *Part 1 R&O*, 30 FCC Rcd at 7576, para. 197. Joint bidding arrangements include arrangements relating to the licenses being auctioned that address or communicate, directly or indirectly, bids or bidding strategies, including arrangements regarding price or the specific construction permits or licenses on which to bid, as well as any such arrangements relating to the post-auction market structure. *Id.* at 7575-76, para. 195. Similarly, the Commission expressly noted that agreements solely for funding purposes, and not with regard to bids, bidding strategies, or post-auction market structure relating to the construction permits or licenses at auction, are not prohibited arrangements. *See id.* at 7576-77, para. 197-98.

<sup>69</sup> 47 CFR § 1.2105(a)(2)(ix).

<sup>70</sup> *Part 1 R&O*, 30 FCC Rcd at 7576, para. 197.

<sup>71</sup> *See* 47 CFR § 73.5002(d).

<sup>72</sup> *See Nevada Wireless*, 13 FCC Rcd at 11978.

<sup>73</sup> *See* 47 CFR §§ 1.2105(c), 1.2107(d) and 1.2109(d).

<sup>74</sup> *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, FCC 07-132, 22 FCC Rcd 15,289, 15,395, paras. 285-86 (2007); *see also Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523, para. 8.



## V. APPLICATION PROCESSING

43. Each applicant for a new cross-service FM translator must comply with all provisions outlined in this public notice and applicable rules of the Commission.

44. No consideration will be given to any proposal for which the required information is not on file by the close of the initial application filing window. No consideration will be given to the following: (1) any application for which both a Form 175 and a complete FCC Form 349 proposal are not on file by the close of the initial application filing window; (2) any proposal filed by an applicant that is not a licensee or permittee of a Class C or D AM broadcast station (including but not limited to any proposal filed by the licensee or permittee of a Class A or B AM broadcast station); (3) any proposal designating an AM primary station that was designated as the primary station on any application filed in either of the 2016 modification windows; or (4) any proposal that specifies a channel in the reserved FM broadcast band (Channels 200-220, 88.1-91.9 MHz).

### A. Initial Determination of Mutual Exclusivity

45. After the application filing deadline, the Bureaus will verify that each Form 175 is substantially complete and complies with the requirements of this public notice. MB then will process all timely and complete Form 349 filings to determine which FM translator proposals are mutually exclusive.<sup>75</sup> The Bureaus subsequently will release a public notice identifying FM translator proposals received during the window that are determined to be mutually exclusive.<sup>76</sup>

### B. Limited Opportunity for Settlement

46. A subsequent 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 settlement agreements.<sup>77</sup> Technical amendments submitted by applicants to resolve their mutual exclusivities must be minor, as defined by the applicable rules of the FM translator service, and must not create any new mutual exclusivity or other application conflict.<sup>78</sup> To facilitate resolution of mutual exclusivity, the prohibited communications rule will be suspended during the settlement period as specified by future public notice(s).<sup>79</sup> Discussions between applicants of bids, bidding strategies or settlements outside of any announced settlement period would violate the Commission's prohibition on communications by auction applicants.<sup>80</sup>

47. An applicant may only file a technical amendment during the settlement period specified by a future public notice. No amendments to the cross-service FM translator filing window Form 349 application, technical or otherwise, will be accepted between the close of the application filing window on August 2, 2017, and the release of the public notice listing the mutually exclusive FM translator applications.

### C. Competitive Bidding Process and Procedures to be Announced in Future Public

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<sup>75</sup> MB will not make any determination as to the grantability of an applicant's technical proposal as part of the process of making mutual exclusivity determinations. A comprehensive review of applicants' technical proposals will be undertaken by the staff following the submission of long-form applications by winning bidders post-auction, by applicants with applications identified as non-mutually exclusive, and by applicants resolving application mutual exclusivity during the specified settlement period.

<sup>76</sup> See 47 CFR § 74.1233(d)(3). All mutually exclusive applications will be considered under the relevant procedures for conflict resolution.

<sup>77</sup> See *id.* § 73.5002(c)(3), (d)(3), (e).

<sup>78</sup> See *id.* § 74.1233(a)(1).

<sup>79</sup> See *id.* § 73.5002(d).

<sup>80</sup> See *id.* §§ 1.2105(c), 73.5002(d), (e); see also Section IV.C., above (Prohibition on Communications by Auction Applicants).

### Notices

48. Commercial applications that remain mutually exclusive after the settlement period closes will proceed to auction. The Bureaus then will announce additional details concerning the competitive bidding process by public notice.

#### **D. Non-Mutually Exclusive Engineering Proposals**

49. Any FM translator proposal in a Form 349 received during the filing window that is not mutually exclusive with any other FM translator proposal in a Form 349 submitted in the filing window will be identified by subsequent public notice. As directed in that public notice, applicants with FM translator proposals identified as non-mutually exclusive will be instructed to submit the complete FCC Form 349 and filing fee, if required, by the deadline set forth in that public notice. No amendments to that cross-service FM translator filing window Form 349 application, technical or otherwise, will be accepted between the close of the application filing window on August 2, 2017, and the release of the public notice listing the non-mutually exclusive FM translator applications. Complete FCC Form 349 non-mutually exclusive applications will be processed and the staff will release public notices listing those applications determined acceptable for filing. Petitions to deny must be filed within 15 days of release of the public notice announcing acceptance of the application at issue.<sup>81</sup>

### **VI. CONTACT INFORMATION**

50. For additional information about FM Translator stations or FCC Form 349, contact James Bradshaw, Lisa Scanlan or Tom Nessinger in the Audio Division of the Media Bureau at (202) 418-2700. For additional information about FCC Form 175, contact Lynne Milne in the Auctions and Spectrum Access Division of the Wireless Telecommunications Bureau at (202) 418-0660. For general auction information, contact the Auctions Hotline at (717) 338-2868.

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<sup>81</sup> See *id.* §§ 73.5006(b), 74.1233(d)(4).

**ATTACHMENT A: FCC FORM 349 TECH BOX FILING INSTRUCTIONS**

1. This attachment provides instructions on completing and submitting an FCC Form 349.
2. Applicants are encouraged to familiarize themselves with the Media Bureau's electronic filing system prior to the opening of the window and to file as early in the window as possible. Each applicant will be able to access its electronically filed application at any point prior to the close of the initial application filing window through the Consolidated Database System (CDBS) online electronic forms filing system, located at the following site:  
[https://licensing.fcc.gov/prod/cdbs/forms/prod/cdbs\\_ef.htm](https://licensing.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm).
3. Electronic filing instructions are available in the CDBS User's Guide. The CDBS User's Guide can be accessed from the electronic filing web site, above, by clicking on the **CDBS User's Guide** link.
4. Those wishing to participate in this auction **must** electronically complete and timely file FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station. Only Section I, the Tech Box of Section III-A, and the Section VI Certification of the electronically filed FCC Form 349 must be completed at this time. The applicant name entered in the FCC Form 349 must be identical with the name of the licensee or permittee on the AM primary station license or construction permit.
5. Each proposal for a new FM translator station must be electronically filed on FCC Form 349 between 12:01 a.m. ET on July 26, 2017, and **prior to 6:00 p.m. ET on August 2, 2017**.
6. **A separate Form 349 must be submitted for each new FM translator station proposed.** An applicant that is the licensee or permittee of multiple AM stations will submit a Form 349 application for each AM station for which it seeks to establish a new cross-service FM translator station. An applicant must specify the CDBS-assigned file number(s) and Facility ID number(s) of all Form 349 application(s) in the Form 175 at the View/Edit Engineering Proposals section.<sup>1</sup>
7. It is the applicant's responsibility to ensure that the CDBS-assigned file number(s) and Facility ID number(s) of each of its Form 349 applications are accurately entered in its Form 175. Failure to do so could result in a Form 349 application being excluded from further auction processing.
8. No consideration will be given to any proposal for which the required information is not on file by the close of the initial application filing window. No consideration will be given to the following: (1) any application for which both a Form 175 and a complete FCC Form 349 proposal are not on file by the close of the initial application filing window; (2) any proposal filed by an applicant that is not a licensee or permittee of a Class C or D AM broadcast station (including but not limited to any proposal filed by the licensee or permittee of a Class A or B AM broadcast station); (3) any proposal designating an AM primary station that was designated as the primary station on any application filed in either of the 2016 modification windows; or (4) any proposal that specifies a channel in the reserved FM broadcast band (Channels 200-220, 88.1-91.9 MHz). Any Form 349 application submitted during the filing window that is not referenced on that applicant's Form 175 will be dismissed in CDBS.
9. At the end of the initial filing window, if an applicant has filed more than one FM translator proposal designating the same AM primary station, only the first-filed FM translator proposal will be considered by staff.<sup>2</sup>

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<sup>1</sup> Note that, although the Integrated Spectrum Auction System (ISAS) may generate an error or warning message if inaccurate or incomplete information is entered in the Engineering Proposals section of an FCC Form 175, an applicant may still certify and submit its Form 175 despite having incompletely or inaccurately entered information regarding Form 349 applications submitted separately in CDBS.

<sup>2</sup> To avoid staff consideration of an unintended proposal, before submission, applicants should carefully review their Form 349 proposals, and delete all undesired proposals that specify the identical AM primary station. Any request

10. No application filing fee is required when filing this form at this time.<sup>3</sup>
11. When filing a new proposal, applicants must select “FM Translator” (Question 1 – Facility Information) and “Short Form Application for FM Translator Auction Window 99,” (Question 2 – Application Purpose), on the Pre-form for Form 349.
12. To complete the filing process, applicants must select the specific application under “Work in Progress” and then click on the “File Form” button. Applicants are advised to print and retain a copy of the Form 349 as filed.
13. Applicants that have successfully filed Form 349 will immediately receive a CDBS response similar to the following:

FCC MB – CDBS Electronic Filing  
Application Reference Number: 20170728XYZ  
Successfully filed at Jul 28 2017 12:01AM

Applicants that believe they have filed correctly and have not received such a message from the electronic filing system should log into their CDBS account and determine the status of the application. If the status is other than “Ready” or “Filed,” the application has NOT been properly filed and will NOT be processed.

14. Applicants may file amendments to their FCC Form 349 until the close of the filing window. To start an amendment, applicants must select “FM Translator” (Question 1 – Facility Information) and “Minor Amendment to Pending Application,” (Question 2 – Application Purpose), on the Pre-form for Form 349. Applicants that have successfully filed an amended Form 349 will receive a CDBS response similar to the one shown above.

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to delete an undesired proposal must be emailed to Jim Bradshaw ([james.bradshaw@fcc.gov](mailto:james.bradshaw@fcc.gov)) before the filing window closes.

<sup>3</sup> Given the general inapplicability of the application filing fee at this time, applicants should not respond to Section I, question 3 of FCC Form 349.

**ATTACHMENT B: SHORT-FORM APPLICATION (FCC FORM 175) FILING INSTRUCTIONS**

1. This attachment provides instructions on completing and submitting an FCC Form 175.

**I. APPLICATION PREPARATION AND SUBMISSION**

2. An applicant must have an FCC Registration Number (FRN) and password in order to log in to the Commission's Auction System and complete an FCC Form 175 to be eligible to participate in the auction of cross-service FM translators (Auction 99). You must be prepared to provide, among other things, basic information about the applicant's legal classification, contact information, and authorized bidders; indicate whether the applicant is seeking a designated entity bidding credit; disclose information about the applicant's ownership structure; and make certain certifications. Additional information about these requirements can be found in the preceding sections of this Public Notice.

3. Each applicant to participate in this auction must submit a single short-form application (FCC Form 175) electronically via the FCC Auction System.<sup>1</sup> **Short-form applications must be submitted and confirmed prior to 6:00 p.m. ET on Wednesday, August 2, 2017.** Late applications or unconfirmed submissions of electronic data will not be accepted.<sup>2</sup>

4. There is no application fee required when filing FCC Form 175.

5. All information that is required to be submitted as part of a short-form application to participate in an auction is necessary to determine each applicant's qualifications and, as such, will be available for public inspection consistent with the information disclosure procedures in effect for this auction. An applicant should take care not to include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its application. An applicant may also request that information submitted not be made routinely available for public inspection following the procedures set forth in Section 0.459 of the Commission's rules.<sup>3</sup> Such a request must be included as an attachment to the applicant's FCC Form 175 and must identify the specific information to which the request applies.<sup>4</sup> Because the required information bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted.<sup>5</sup>

6. You may make as many changes to an application as necessary from the time the initial application filing window opens at 9:00 a.m. ET on July 26, 2017, until the close of the initial filing window at 6:00 pm ET on August 2, 2017. Information in an application will not be considered by the Commission unless you click on the **CERTIFY & SUBMIT** button on the *Certify & Submit* screen in the FCC Auction System after providing or updating the information required in the FCC Form 175.

**A. Minimum Software Requirements**

7. To apply, a party must complete and submit an application using a personal computer or equivalent device. Currently, Apple® Mac OS,® smart phones, and tablets are not supported.

8. A web browser must be used to access the Auction System. The following web browsers are compatible with the Auction System:

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<sup>1</sup> This filing window will open on July 26, 2017 at 9:00 a.m. ET, and will remain open on a 24-hour basis during the filing period.

<sup>2</sup> Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for preparing, reviewing, and filing their applications.

<sup>3</sup> 47 CFR § 0.459.

<sup>4</sup> The procedure for uploading application attachments is described below in Section I.D.7 of this attachment.

<sup>5</sup> 47 CFR § 0.459(a).



- Mozilla® Firefox®;
- Google Chrome® 46.0.2490.80 or higher; or
- Microsoft® Internet Explorer 9.0 or higher (compatibility mode is not supported; if you use an Internet Explorer browser, you must turn off compatibility mode in your browser's settings).

However, for optimal performance, Commission staff recommends the use of either Mozilla® Firefox® or Google Chrome®.

9. A PDF viewer is also required. Adobe Acrobat Reader 5.0 or higher is recommended (available at no cost at [www.adobe.com](http://www.adobe.com)). The minimum screen resolution for the Auction System is 1024 x 768.

### **B. Logging On**

10. You must use the applicant's FRN and associated password to log into the FCC Auction System. To submit an FCC Form 175 electronically via the Internet, open a web browser and click on either of these links: <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Auction System* screen, you may log in by entering the applicant's FRN and associated password and then clicking on the **Log In** button, which will take you to the *My Auctions* screen. On this screen, you may create a new FCC Form 175 by clicking on the link **Click here to file FCC Form 175** under the *Auction 99* heading.

### **C. Application Filing Instructions**

11. The FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.<sup>6</sup> An applicant must submit required information as entries in the data fields of FCC Form 175 whenever a data field is available for that information. An attachment should not be used to provide information that can be supplied within data fields of FCC Form 175.

12. The FCC Form 175 consists of seven sections, each requesting separate types of information: 1) *Applicant Information*; 2) *Engineering Proposals*; 3) *New Entrant Eligibility*; 4) *Agreements*; 5) *Ownership*; 6) *Summary*, and 7) *Certify & Submit*. On the *Applicant Information* screens, you will provide basic information about the applicant, including its legal classification, contact information, responsible party (if applicable), authorized bidders, and method of bidding. The *Engineering Proposals* screen is where you will enter information on the engineering proposals you submitted on Form(s) 349 in CDBS. The *Agreements* screens are where you will identify and provide a brief description of each agreement entered into by the applicant that is required to be disclosed under the Commission's rules. The *Ownership* screens are where you will provide information regarding parties with ownership or controlling interests in the applicant. The *Summary* screen provides an overview of an applicant's FCC Form 175 that facilitates reviewing and modifying specific information as well as an automated check for certain inconsistencies and omissions in information in the application. Finally, the *Certify & Submit* screens allow you to provide the required certifications and submit the application to the Commission. You may access any of these screens by clicking on the relevant section in the right window pane titled "Application Sections." To expand a group of screens, click on the sideward-pointing triangle to the right of the section title. By clicking on the relevant section, the application will jump directly to that section. Items are shown as clickable in the application when the cursor turns into a hand icon as the mouse indicator passes over a particular area.

13. An applicant is required to complete certain sections that will display as it navigates through the application depending on the information it initially provided. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application (called a responsible party). If the applicant is an individual, no additional information is

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<sup>6</sup> See generally, 47 CFR § 1.2105.

needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant is a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information.

14. No individual or entity may file more than one FCC Form 175.<sup>7</sup>

15. You must follow the instructions below when completing the FCC Form 175. Additional help in filling out the FCC Form 175 is available in two ways through the Auction System itself: (1) by clicking on the **Help** link located in each section of the application and in the upper right corner of each 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 screen being viewed and may differ from screen to screen because the common questions are intended to be relevant to each specific screen. In the event that you need further information or guidance beyond what is provided by these sources, use the contact information provided in this Public Notice to obtain additional assistance.

### 1. Applicant Information

16. The *Applicant Information* screens are the first series of screens in FCC Form 175, in which an applicant must provide basic information including:

- the applicant's legal classification (e.g., individual, corporation, limited liability company, etc.);
- optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company;
- whether the application identifies proposed facilities as Noncommercial Educational (NCE). This response (yes or no) is mandatory.<sup>8</sup>
- the applicant's name, which will be used as the bidder name during the auction.
- the applicant's address (physical location; a post office box is **not** permitted)
- citizenship for an individual or jurisdiction of formation for a legal entity
- for an applicant classified as a legal entity (e.g., corporation or partnership), the name of and information regarding the entity's responsible individual<sup>9</sup>
- the name, address, telephone number, fax number, and e-mail address of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175<sup>10</sup>
- 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

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

- A post office box may **not** be used for an applicant's address.
- For this auction, the applicant name entered in the FCC Form 175 must be identical with the name of the licensee or permittee on the AM primary station license or construction permit.

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<sup>7</sup> See 47 CFR § 1.2105(a)(3). See also Section IV.B.2., above (Each Applicant May File Only One FCC Form 175).

<sup>8</sup> Any application for an NCE station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing. See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701, paras. 21-24.

<sup>9</sup> Section 1.2105(a)(2) requires that the name and title of an officer or a director be reported if the applicant is a corporation. This rule requires disclosure of the name and title of a responsible person if a partner is not a natural person.

<sup>10</sup> Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that the applicant's counsel or other representative is authorized to speak on its behalf. Such an authorization may be sent by e-mail to [auction99@fcc.gov](mailto:auction99@fcc.gov). A FAX number is required for a variety of purposes, including Commission staff sending confirmation information in the event an applicant utilizes telephonic bidding.

- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **Copy Applicant Address** button to automatically fill in the contact person's address. A post office box may **not** be used for a contact person's address.
- Each applicant must identify at least one authorized bidder. While an applicant may change its authorized bidders at a later date, only those bidders listed on the FCC Form 175 will be authorized to place 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 in this auction for telephonic bidding.
- **Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing.**<sup>11</sup>

18. When all Applicant Information has been completed, click the **Save & Continue** button.

## 2. Engineering Proposals

19. *Engineering Proposals* is the second section in FCC Form 175. An applicant will be required to enter in Form 175 data fields references to each of its Engineering Proposal(s) it filed in CDBS by entering the CDBS-assigned File Number and Facility ID Number.

20. In the **View/Edit Engineering Proposals** screen, the applicant must enter the CDBS File Number and Facility ID Number of its Form 349 application in the indicated fields, then click the **Add** button to add the engineering proposal to the list of proposals below the entry fields. To clear the File Number and Facility ID Number fields, the applicant can click the **Cancel** link next to the **Add** button. From the **View/Edit Engineering Proposals** screen, the applicant may:

- Modify identification information regarding an engineering proposal by clicking on the Edit button next to the proposal.
- Remove the engineering proposal identification and all information associated with the engineering proposal by clicking the **Remove** button next to the proposal.
- Add additional engineering proposal identifications by entering Engineering Proposal information in the relevant fields and clicking the **Add** button.

21. It is the applicant's responsibility to ensure that the CDBS-assigned file number(s) and Facility ID number(s) of all Form 349 application(s) are accurately entered in its Form 175.<sup>12</sup> Failure to do so could result in a Form 349 application being excluded from further auction processing.

## 3. New Entrant Bidding Credit Eligibility

22. *New Entrant Eligibility* is the third section in FCC Form 175. Initially, an applicant indicates whether it is claiming the New Entrant Bidding Credit and, if so, whether it is claiming a 25 percent or 35 percent New Entrant Bidding Credit.

23. An applicant not seeking a New Entrant Bidding Credit will continue to the *Agreements* section of Form 175.

24. An applicant also is asked to indicate whether it claims to be an "Eligible Entity" as defined in 47 CFR Section 73.5008(c) for purposes of claiming eligibility for the New Entrant Bidding Credit. An applicant must click "Yes" or "No," as appropriate.

<sup>11</sup> See 47 CFR § 73.5002(b); *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701, paras. 21-24.

<sup>12</sup> Note that, although the Integrated Spectrum Auction System (ISAS) may generate an error or warning message if inaccurate or incomplete information is entered in the Engineering Proposals section of an FCC Form 175, an applicant may still certify and submit its Form 175 despite having incompletely or inaccurately entered information regarding Form 349 applications submitted separately in CDBS.

25. An applicant seeking a 35 percent New Entrant Bidding Credit does not need to provide any additional information in the Form 175 regarding its claimed New Entrant Bidding Credit, and will continue to the *Agreements* section of Form 175.

26. An applicant claiming a 25 percent New Entrant Bidding Credit must 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.<sup>13</sup> Such an applicant must 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 broadcast facilities proposed by the applicant in this auction are in the “same area” as existing mass media facilities, as defined by applicable Commission rules.<sup>14</sup>

27. In the event that the applicant indicates that any of the broadcast facilities proposed in its application for this auction are in the “same area” as the identified existing mass media facility, the applicant must continue to an additional screen where the applicant must indicate which broadcast facility it proposed in this auction is in the “same area” as the identified existing mass media facility.<sup>15</sup> For purposes of determining whether a broadcast facility identified for bidding in the auction is in the “same area” as an applicant’s existing mass media facilities, the coverage area of the auction facility is calculated using the facilities specified in the referenced engineering proposal.<sup>16</sup>

28. Once the applicant has identified all relevant existing mass media facilities, and all broadcast facilities proposed in its application that are located in the “same area” as each relevant existing mass media facility, it 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 broadcast facilities proposed for this auction by the applicant in the “same area” as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Back to New Entrant Bidding Credit Section** button or the **Modify Bidding Credit Selection** link to return to the initial *New Entrant Bidding Credit* screen.
- Modifying information about existing mass media facilities by clicking on them.
- Clicking the **Delete** button next to the name of an existing mass media facility to delete a facility and identified proposed broadcast facilities in the “same area.”
- Clicking the **Add Existing Mass Media Facility** button to add additional mass media facilities.
- Clicking the **Add/Remove Proposed “Same Area” Facilities** button under the name of an existing mass media facility, which takes you to the *Add Proposed “Same Area” Facilities to Existing Mass Media Facility* screen for an existing mass media facility.
  - After clicking on the *Add Proposed “Same Area” Facilities to Existing Mass Media Facility* screen, select an engineering proposal from the drop-down menu and then click

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<sup>13</sup> 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, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 614, 618, para. 8 (2003).

<sup>14</sup> See 47 CFR §§ 73.5007, 73.5008.

<sup>15</sup> Any existing media of mass communications will be considered in the “same area” as a proposed broadcast or secondary broadcast facility if the relevant defined service areas of the existing mass media facilities partially overlap, or are partially overlapped by, the proposed broadcast or secondary broadcast facility’s relevant contour. See 47 CFR § 73.5007(b).

<sup>16</sup> For purposes of determining whether a proposed broadcast facility is in the “same area” as an existing mass media facility, the relevant contour of the proposed broadcast or secondary broadcast facility is defined in 47 CFR § 73.5007(b)(3).

- the **Add** button to add a new “same area” facility.
- After clicking on the *Add Proposed “Same Area” Facilities to Existing Mass Media Facility* screen, click the **Remove** button next to a Proposed Broadcast Facility to delete it as a “same area” facility.

29. When all relevant existing mass media facilities have been identified, as well as identifying all proposed broadcast facilities in the “same area” as each relevant existing mass media facility, at the *View/Edit All Facilities* screen, click the **Save & Continue To Agreements** button to navigate to the Agreements section of Form 175.

#### 4. Agreements

30. *Agreements* is the fourth section in FCC Form 175. In these screens, you will provide information regarding the applicant’s auction-related agreements subject to disclosure under the Commission’s rules.<sup>17</sup>

31. On the *Agreements With Other Parties and Joint Bidding Arrangements* screen, you must respond “Yes” or “No” to whether the applicant has entered into any partnerships, joint ventures, consortia, or other agreements, arrangements, or understandings of any kind relating to any cross-service FM translator construction permit subject to auction, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permits on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

32. If an applicant answers “No,” you will continue to the *Ownership* section, described below.

33. If the applicant answers “Yes,” you will continue to the *View/Edit Agreements* screen after clicking the **Save & Continue** button. On the *Edit Agreements* screen, you must make an entry for each agreement you need to disclose by clicking the **Create New Agreement** button. On the *Create New Agreement* screen, you must provide an identifying name for the agreement or may use the default name assigned by the Integrated Spectrum Auction System (ISAS) (e.g., Agreement 1). The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique. Neither the name of the agreement nor its description should potentially reveal an applicant’s bidding strategy.

34. Next, the applicant must selection an Agreement Type from the drop-down menu. If the agreement type is not listed as an option under the drop down list, select “Other” and enter a description in the Specify field that subsequently appears.

35. You must also identify the parties, other than the applicant, to each agreement disclosed on the application, and indicate the type of party (i.e., entity or individual). You may provide an FRN for the other party to the agreement, if available.<sup>18</sup> After completing the necessary information for each party, you must click the **Add** button to save the information.

36. Additional parties can be added by clicking the **Add Party** button. To clear the party identification fields, you may click the **Clear** link, re-select the **Entity** or **Individual** button, or click the **Cancel** button. In the event of an error, the name of a party and its associated FRN can be deleted from the Form 175 by clicking on the **Remove** button next to the party name. To edit a party name or FRN,

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<sup>17</sup> 47 CFR § 1.2105(a)(2)(viii). The Commission’s rules now generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by, such applicants). *See id.* § 1.2105(a)(2)(ix). *See also* Section IV.B.4 (Disclosure of Agreements Relating to Permits Subject to Auction) and Section IV.C.3. (Permissible Communications) above. An applicant has the option of explaining in an attachment why a particular agreement, understanding or arrangement is not prohibited by Commission rules.

<sup>18</sup> While providing the FRN is optional, including that information may prevent identification errors resulting from parties having similar names or a single party using multiple names.



click the **Edit** button next to the party name. After identifying all parties to a particular agreement, click the **Save & Continue** button to return to the *View/Edit Agreements* screen.

37. The *View/Edit Agreements* screen lists the agreements and parties to each agreement that already have been entered. From this screen, the following options are available:

- Click the **Back** button to return to the initial *Agreements With Other Parties and Joint Bidding Arrangements* screen, where the applicant indicates whether it has any agreements;
- Click the **Edit** button to modify agreement information;
- Click the **Delete Agreement** button below the agreement name and type to delete an agreement and associated parties;
- Click the **Create New Agreement** button to add an additional agreement.

38. An applicant that has entered into any agreement(s) that are subject to disclosure under the Commission's rules must also upload an attachment that briefly describes each such agreement. You must select "Agreement" as the attachment "Type" when uploading the document. The procedures for uploading this required attachment is described below in Section I.D.7. of this attachment.

39. When all agreements and all of the parties to each agreement have been identified, the applicant should click the **Continue** button to move to the *Ownership* section of Form 175.

## 5. Ownership

40. The *Ownership* screens are the fifth series of screens in the FCC Form 175. On these screens, you must provide information regarding parties with ownership or controlling interests in the applicant that must be disclosed pursuant to Commission Part 1 competitive bidding rules.<sup>19</sup>

### a. Ownership Disclosures Required of All Applicants

41. Sections 1.2105 and 1.2112 of the Commission's rules list the disclosable interest holders ("DIHs") in the applicant that must be reported in FCC Form 175.<sup>20</sup> These DIHs in the applicant include any individual or entity that directly or indirectly owns and/or controls the applicant, such as:

- any party holding 10 percent or more of stock in the applicant, whether voting or non-voting, common or preferred, including the specific amount of the interest or percentage held;
- in the case of a limited partnership, each limited partner whose interest in the applicant is 10 percent or greater;
- in the case of a general partnership, each partner and its share in the partnership;
- in the case of a limited liability company, each member whose interest in the applicant is 10 percent or greater; and
- any party holding an indirect ownership interest in the applicant that equals 10 percent or more of the applicant as discussed below.

42. The Commission's rules require that **holders of both direct and indirect interests must be reported, which may include insulated interest holders and holders of non-voting stock/equity in the applicant.**

43. Section 1.2112 lists the FCC-regulated entities or applicants for an FCC license ("FRBs") that must be disclosed in FCC Form 175.<sup>21</sup>

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<sup>19</sup> 47 CFR §§ 1.2105(a)(2)(ii)(A)-(B), 1.2110, 1.2112.

<sup>20</sup> Section 73.5002(b) requires, among other things, that each applicant for a broadcast auction must comply with the disclosure requirements of Section 1.2105(a) and any Commission public notices. Section 1.2105(a) incorporates the ownership disclosure requirements set forth in Section 1.2112. 47 CFR §§ 1.2105, 1.2112(a), 73.5002(b).

<sup>21</sup> *See id.* § 1.2112(a)(7), (b)(1)(ii).

44. Each applicant, regardless of whether it is seeking a bidding credit, must provide information in its FCC Form 175 application concerning its DIHs and FRBs.<sup>22</sup>

**b. Adding a Disclosable Interest Holder (DIH)**

45. To add a DIH, click on the **Add** button on the *View/Edit Ownership Disclosure Information* screen, which will direct you to the *Add Disclosable Interest Holder* screen. You must make a DIH entry for any individual or entity required to be disclosed under Section 1.2112 of the Commission's rules.<sup>23</sup> On this screen and subsequent screens, you must provide information about the type of DIH (i.e., entity or individual), contact information for the DIH, type of interest the DIH has in the applicant, percent of interest held in the applicant,<sup>24</sup> and the DIH's jurisdiction of formation (for an entity) or citizenship (for an individual). You have the option of providing the FRN of a DIH; an FRN entry is not required.

46. If you enter one or more DIHs with indirect ownership interest(s) in the applicant on the *Add Disclosure Interest Holder Type* screen,<sup>25</sup> you must include for each such DIH 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 owner(s) to the applicant, e.g., indirect owners X and Z own 50 percent of holding company Y and holding company Y directly owns 100 percent of the applicant.<sup>26</sup> You should provide only one attachment connecting all indirect owners to the applicant. The information in the attachment should be consistent with the information already provided in the data fields of the FCC Form 175. Select "Indirect Ownership" as the attachment "Type" when uploading this attachment. The procedures for uploading this required attachment is described below in Section I.D.7. of this attachment.

47. The "Percent of Interest Held in Applicant" should reflect the DIH's aggregate ownership interests in the applicant (both direct and indirect). 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 DIHs may exceed 100 percent. In other cases, a DIH may have a zero percent ownership interest in the applicant.<sup>27</sup>

48. After completing the necessary information for a DIH, click the **Save & Continue** button. This will direct you to the *Information for DIH* screen, which will summarize the information you submitted for a particular DIH. To edit any information entered for a DIH on the *Information for DIH* screen, click the **Open** button next to the section in which you need to make changes. This screen also provides a button that will enable you to add an FRB entry directly to an existing DIH, without needing to reenter the DIH's information. After you have made any necessary FRB entries for each DIH and have confirmed the accuracy of all of the information on the *Information for DIH* screen, click the **Continue** button to save the information.

**c. Adding a FCC-Regulated Business (FRB)**

49. To add an FRB of the applicant, click on the **Add** button in the *View/Edit Ownership Disclosure Information* screen, which will direct you to the *Add FCC Regulated Business of Applicant* screen. The *Add FCC Regulated Business of Applicant* screen asks you to provide the name of the FRB,

<sup>22</sup> See 47 CFR §§ 1.2105(a)(2)(ii)(A)-(B), 1.2112.

<sup>23</sup> *Id.* § 1.2112(a)(7).

<sup>24</sup> If the DIH holds an ownership interest that is not listed on the screen (e.g., another type of option or debt securities), select "Other" and enter the DIH's interest(s) in the "Specify" field accordingly.

<sup>25</sup> 47 CFR § 1.2112(a)(6).

<sup>26</sup> *Id.*

<sup>27</sup> For example, as controlling interests, officers and directors of an applicant would be DIHs but may not have an ownership interest in the applicant.

its principal business, and percent of interest held. “Percent of Interest Held” refers to the percent of interest held by the applicant in the FRB.

50. To add an FRB for a DIH, click **Add Business** button under the DIH’s name in the **Disclosable Interest Holders of this Applicant** section on the *View/Edit Ownership Disclosure Information* screen. The *Add FCC Regulated Business of DIH* screen asks you to provide the name of the FRB, its principal business, and percent of interest held. “Percent of Interest Held” refers to the percent of interest held by the DIH in the FRB.

51. To simplify filling out the FCC Form 175, you can click on the **Select Entities Already Entered** link on the *Add FCC Regulated Business of Applicant* or *Add FCC Regulated Business of DIH* screens, respectively, when disclosing an FRB previously entered as an FRB for the applicant or another DIH. When doing so, be sure to enter the “Percent of Interest Held” in the FRB by the applicable party (either the applicant or the DIH).

52. After entering the necessary information for a particular FRB, you must click the **Add** button to save the information. Once you have entered all of the necessary FRB information, click the **Save & Continue** button.

#### d. View/Edit Ownership Disclosure Information

53. The *View/Edit Ownership Disclosure Information* screen summarizes ownership information already entered in the FCC Form 175, and provides links enabling existing information to be revised and additional information to be added.

### 6. Summary

54. The sixth section of the Form 175 is the *Summary* screen which offers an overview of an applicant’s FCC Form 175. This screen will appear prior to the *Certify & Submit* screen, in order to permit you to review all the information entered on previous screens and to provide an opportunity to check for certain inconsistencies or omissions in the information within the FCC Form 175.

55. The *Error Summary* lists the previous sections of the application and indicates by background color code whether there are error or warning messages in those sections. Green means there are no error or warning messages; Yellow means that there are warnings that will not prevent the applicant from certifying and submitting the Form 175 application; Red means that there are error messages in that section that must be remedied before the applicant can certify and submit the Form 175 application.

- Clicking on the section name of any yellow or red section will display all the warnings and/or error messages detected in that section of the Form 175 application.
- Clicking the **View All** button displays all error and warning messages detected in all sections of the Form 175 application.
- Clicking the **Hide All** button will hide all error and warning messages being displayed.

56. Clicking on the **Screen** link in any displayed error or warning message will take the applicant directly to the application screen on which the error or warning message was displayed.

57. If there is an error message displayed in any application section (the section name displays in a red field), the applicant will not be able to continue to the *Certify & Submit* section until each error is resolved.

58. Each applicant is solely responsible for providing complete and accurate information in its FCC Form 175. The automated check for errors is provided to assist applicants in completing the FCC Form 175. However, the automated check may not catch all errors, and an applicant cannot rely on the automated check to determine the completeness or the accuracy of submitted information. In addition, although you will be able to proceed to the *Certify & Submit* screen even if you receive a warning message, you should not rely on your ability to certify and submit the FCC Form 175 with a warning message as a confirmation that the Commission has approved an application.

59. If the automated check does not encounter certain inconsistencies or omissions, each application section will display the message “No errors” with a green checkmark. Once this happens, you may then click the **Continue to Certify** button.

## 7. Attaching Additional Information

60. If an applicant is required or otherwise needs to provide additional information not requested or able to be entered directly on the FCC Form 175 screens (e.g., a description of the relationships among indirect owners of the applicant), such information should be provided in an attachment. You can add an attachment to a FCC Form 175 via the *Application Attachments* screen by clicking the **Attachments** link in the upper right of any screen. This screen requests information regarding the type of attachment to be added, the file to be attached, and a brief description of the attachment.

61. Answering “Yes” to any of the following FCC Form 175 questions requires the submission of an attachment associated with the particular question (i.e., indirect ownership or agreements). Be sure to select the appropriate “Type” for that attachment, or an error message will appear on the *Error Summary* screen and the application will not be able to be certified and submitted.

- To submit the required description of any agreements or arrangements that must be disclosed pursuant to Section 1.2105(a)(2)(viii) of the Commission’s rules, select “Agreement” as the “Type” of attachment in the drop down list and upload the required attachment.<sup>28</sup>
- If you indicate on the *Add Disclosable Interest Holder Type* screen that a DIH has an indirect ownership interest in the applicant, select “Indirect Ownership” as the “Type” of attachment in the drop down list and upload the required one attachment describing the indirect ownership interest held by that DIH and all other DIHs with an indirect ownership interest in the applicant.<sup>29</sup>

62. If an attachment that is a request for a waiver or exemption of any of the Commission’s rules or procedures needs to be submitted, identify the attachment as such by selecting “Waiver” as the “Type” of attachment in the drop down list to help facilitate prompt processing of the request. A request for confidential treatment of information submitted with its application should be identified as such by selecting “Confidential Treatment” as the “Type” of attachment in the drop down list. For any other attachments the applicant needs or wishes to submit in support of its application, select the appropriate attachment “Type.”

63. Once the required or otherwise necessary information is selected, you can add the attachment to the application by clicking on the **Upload File** button. A list of any attachments already uploaded to the applicant’s FCC Form 175 will appear at the bottom of the screen.

64. When uploading attachments, you may use a variety of file formats, including Word (.doc and .docx), Adobe PDF (.pdf), and text files (.txt and .odt).<sup>30</sup> You must, however, verify that the files contain all attachment information. Any uploaded files may be no larger than 10 MB each and must not be password-protected. Graphics files (e.g., .bmp, .tiff, .jpg) are not supported. Spreadsheets (.xls, .xlsx, and .csv) are supported but are not recommended. Once all attachments are uploaded, click the **CONTINUE** button. After the FCC Form 175 filing deadline, an application attachment may not be deleted or withdrawn.

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<sup>28</sup> 47 CFR § 1.2105(a)(2)(vii).

<sup>29</sup> This topic is discussed in Section I.C.5.c. of this Attachment.

<sup>30</sup> Any files uploaded will be automatically converted to a .pdf format.

## 8. Certify and Submit

65. The *Certify & Submit* screens are the seventh and final series of screens in FCC Form 175. On these screens, an applicant provides several certifications required of all auction applicants.<sup>31</sup> The *Certify & Submit* screen also requests that the applicant's certifying official be identified and sign the application.

66. The first *Certify & Submit* screen asks whether the applicant or any of its controlling interests have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency within the meaning of Section 1.2105(a)(2)(xii) of the Commission's rules.<sup>32</sup>

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

68. An FCC Form 175 must be certified by a person with the authority to bind the applicant.<sup>33</sup> In the event that changes are made in any of the information in the FCC Form 175 after the application filing deadline, the person originally certifying the application will have to certify the changes as well. The person certifying the application cannot be changed after the initial application filing deadline.

69. Each applicant must certify on its FCC Form 175 under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a Commission license.<sup>34</sup> Submission of an FCC Form 175 constitutes a representation by the person certifying that he or she is an authorized representative of the applicant with the authority to bind the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true, complete, and correct.

70. 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 change in the person certifying the application is considered a major change to an FCC Form 175 and will not be permitted after the application filing deadline.

71. Once the two *Certify & Submit* screens have been filled out, click on the **Certify & Submit** button on the second *Certify & Submit* screen to submit the application.<sup>35</sup> Information in an application will not be considered by the Commission unless the applicant's certifying official clicks the **Certify & Submit** button on this screen after the required information has been provided in the FCC Form 175. You are advised to print and retain a copy of the Form 175 as filed.

72. After the application has been submitted, a confirmation email will be sent to the email address provided in the Form 175 for the contact. The applicant's contact should print and retain a copy of the confirmation email for the benefit of the applicant.

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<sup>31</sup> These certifications are made under penalty of perjury and generally confirm that the applicant is legally, technically, financially and otherwise qualified to hold a Commission license, including its compliance with the foreign ownership provisions of the Communications Act of 1934, as amended. *See* 47 CFR § 1.2105(a)(2).

<sup>32</sup> *Id.* § 1.2105(a)(2)(xii).

<sup>33</sup> *See id.* § 1.917; *see also id.* § 73.3513.

<sup>34</sup> *Id.* § 1.2105(a)(2)(v).

<sup>35</sup> Please allow up to several minutes for processing once you click the **Certify & Submit** button, particularly if the applicant has a large number of ownership entries. To avoid technical complications, do not click the **Certify & Submit** button more than once while waiting for system to process your submission.



73. FCC Form 175 applications for Auction 99 must be submitted and confirmed prior to **6:00 p.m. ET on August 2, 2017**. Late applications or unconfirmed submissions of electronic data will not be accepted.

**D. Withdrawing an Auction Application Before the Filing Deadline and Updating Existing Auction Applications**

**1. Withdrawing an Application**

74. An applicant may withdraw its previously-submitted application only during the initial application filing window. To withdraw a submitted application before the initial auction application filing deadline, click on the **Withdraw Application** icon on the *Review or Modify Existing Auction Applications* section of the *Auction Application Manager* screen. The entire FCC Form 175, including all previously-submitted data and any uploaded attachments, will be deleted. **An application may not be withdrawn after the initial auction application filing deadline (i.e., 6:00 p.m. ET on August 2, 2017).**

**2. Updating an Existing Auction Application**

75. After the initial FCC Form 175 filing deadline, an applicant may make only minor changes to its application. Major modifications will not be permitted.<sup>36</sup> If an applicant needs to make permissible minor changes to its Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), during a time when the FCC Auction System is available to the applicant for purposes of making the type of change(s) required, such changes must be made electronically to its FCC Form 175 using the FCC Auction System.

76. The *Review or Modify Existing Applications* section of the *Auction Application Manager* screen displays any application created or submitted within an auction application filing window. This screen shows which auction the application was filed for, the application status, the date and time the application was last modified, and the date and time the application was last submitted. It may be used as a reference to confirm the date and time of the most recent submission of the application.

77. To review or continue working on an existing application, click the auction number for the application, which will display the application's *Summary* screen in a view/edit mode. To submit any changes made to the FCC Form 175, go to the second *Certify & Submit* screen and click the **Certify & Submit** button.

78. During any time period when an applicant cannot use the FCC Auction System to make minor permissible changes to its FCC Form 175 for other than administrative changes (e.g., adding or deleting an authorized bidder, changing responsible party or contact person name and related information), the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 to [auction99@fcc.gov](mailto:auction99@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 99 and the name of the applicant, for example, "Re: Changes to Auction 99 Application of XYZ Corp." Any attachments to this e-mail must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes by letter in this manner must subsequently update its FCC Form 175 in the FCC Auction System once it is open and available to applicants.

79. Moreover, after the initial application filing window has closed, the FCC Auction System will not permit an applicant to make certain changes itself (e.g., correcting a misstatement of the applicant's legal classification or reducing the applicant's claimed bidding credit level). If an applicant needs to make a permissible minor change that cannot be made using the FCC Auction System, it must submit a written request by e-mail to the electronic mailbox at [auction99@fcc.gov](mailto:auction99@fcc.gov) requesting that the Commission staff manually make the change on the applicant's behalf. After this change is made to the FCC Form 175 by Commission staff, the applicant must then recertify and resubmit its application by clicking on the **Submit** button to confirm the requested change.

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<sup>36</sup> *Id.* § 1.2105(b). See Section IV.B.11, above (Modifications to Short-form Applications).

**E. FCC Form 175 Technical Support**

80. Technical support for FCC Form 175 is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephony (TTY)). The hours of service are 8 a.m. - 6 p.m. ET, Monday - Friday. All calls to the FCC Technical Support Hotline are recorded.