



# PUBLIC NOTICE

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DA 21-1412

November 15, 2021

## AUCTION OF CONSTRUCTION PERMITS FOR LOW POWER TELEVISION AND TV TRANSLATOR STATIONS

### SETTLEMENT PERIOD ANNOUNCED FOR MUTUALLY EXCLUSIVE APPLICATIONS FOR AUCTION 111

#### Settlement Agreements Due by November 30, 2021

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Media Bureau (MB) identify two mutually exclusive short-form applications to participate in Auction 111.<sup>1</sup> We also announce a limited period for these mutually exclusive applicants to enter into a settlement agreement until November 30, 2021.<sup>2</sup> If these applicants wish to resolve their mutual exclusivity without competitive bidding, they must file any withdrawal request or request for approval of a settlement agreement on or before November 30, 2021, and otherwise comply with the terms of this Public Notice. This Public Notice also removes 16 construction permits from Auction 111 because mutually exclusive short-form applications were not filed for those construction permits.

#### I. CONSTRUCTION PERMITS SUBJECT TO COMPETITIVE BIDDING PROCEDURES

2. **Remaining MX Group.** MX Group 21 is the sole remaining MX Group to be resolved via Auction 111. Attachment A to this Public Notice lists the two mutually exclusive short-form applications for MX Group 21 that were received for Auction 111. These listed applications are subject to the Commission's competitive bidding procedures.<sup>3</sup> Unless the mutual exclusivity is resolved during the limited settlement period announced in this Public Notice, an applicant listed in Attachment A cannot obtain its proposed construction permit without completing the remaining steps to become qualified to bid

<sup>1</sup> A copy of this Public Notice will be sent by email and overnight delivery to the contact person listed on the short-form application (FCC Form 175) for each Auction 111 applicant, and to the contact person listed on each LPTV or TV translator (LPTV/translator) station application for parties that were eligible to submit a short-form application but did not. See *Update to List of Parties to Participate in the Auction of Construction Permits for Low Power Television and TV Translator Stations (Auction 111)*, Public Notice, DA 21-1291 (OEA/MB Oct. 14, 2021) (*Auction 111 Eligible Parties Public Notice*).

<sup>2</sup> See 47 CFR § 73.5002(c)-(e); *Auction of Construction Permits for Low Power Television and TV Translator Stations; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 111*, Public Notice, DA 21-1176 at 33, para. 99 (OEA/MB Sept 21, 2021) (*Auction 111 Procedures Public Notice*).

<sup>3</sup> See 47 U.S.C. § 309(j); 47 CFR § 73.5000(a); see generally *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920 (1998), *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

in Auction 111 and placing a bid, even if the other auction applicant in MX Group 21 does not become qualified to bid or in fact place a bid.<sup>4</sup>

**3. Construction Permits Removed from Auction 111.** The other 16 construction permits are removed from Auction 111. In order to participate in Auction 111, an eligible party was required to file a short-form application and select the construction permit associated with its pending, mutually exclusive application for a new or modified LPTV/translator station (long-form application) by November 9, 2021.<sup>5</sup> In MX Group 18, the parties submitted a Joint Settlement Request before the short-form application deadline on November 9, 2021.<sup>6</sup> MB approved the Joint Settlement Request on November 10, 2021, and therefore the construction permit for MX Group 18 is removed from Auction 111.<sup>7</sup> In MX Groups 12 and 13, only one party filed a short-form application that covered the subject construction permit. Because only one applicant filed a short-form application for each of these permits, mutual exclusivity does not exist, and therefore, the construction permits for MX Groups 12 and 13 are not subject to competitive bidding and are removed from Auction 111.<sup>8</sup> For the 13 remaining MX Groups, no party filed a short-form application.<sup>9</sup> The construction permits for these MX Groups are also removed from Auction 111.<sup>10</sup>

**4. Settled and Singleton Applications.** Attachment B to this Public Notice lists the long-form applications that are no longer mutually exclusive with any other long-form application, either because the applicant settled its mutual exclusivity prior to the short-form filing deadline (settled application) or because the applicant was the only eligible party to file an FCC Form 175 that covered the relevant construction permit (singleton application). The short-form applications filed by such applicants are no longer pending, and these short-form applications are no longer subject to the Commission's auction procedures.<sup>11</sup> Because each party listed in Attachment B has already filed a long-form application, the singleton applicants are not required to submit a separate long-form application or modify their existing long-form application.<sup>12</sup> MB will process these pending long-form applications in accordance with its standard application processing procedures.

<sup>4</sup> See, e.g., *Auction 111 Procedures Public Notice* at 33, para. 99.

<sup>5</sup> *Auction 111 Procedures Public Notice* at 9-10, para. 19; *Auction 111 Eligible Parties Public Notice* at Attach. A.

<sup>6</sup> See Joint Petition of Telecinco, Inc. and Spanish Broadcasting System Holding Company, Inc. For Approval of Settlement Agreement, LMS File No. BNPDDVL-20090825BQD (filed Nov. 9, 2021) (Joint Settlement Request).

<sup>7</sup> Letter to Richard Lara, General Counsel, Spanish Broadcasting System Holding Company, and Andrés Ramírez de Arellano, President & CEO, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, dated November 10, 2021; *Auction 111 Procedures Public Notice* at 8-9, paras. 16-17.

<sup>8</sup> *Auction 111 Procedures Public Notice* at 8-9, para. 17.

<sup>9</sup> Specifically, no party filed a short-form application for MX Groups 2-7, 10, 14-17, and 19-20.

<sup>10</sup> The pending LPTV/translator construction permit application of each party that failed to file a short-form application will be dismissed. See *Auction 111 Procedures Public Notice* at 9, para. 17.

<sup>11</sup> See 47 U.S.C. § 309(j); 47 CFR § 73.5005(d); *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920, 15980, para. 154 (1998), recon. granted in part and denied in part, Memorandum Opinion and Order, 14 FCC Rcd 8724, modified, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

<sup>12</sup> See 47 CFR § 73.5005(d) (requiring singleton applicants to file long-form applications within 30 days following release of a public notice identifying any such non-mutually exclusive applicants); see also *Auction 111 Procedures Public Notice* at 34, para. 101 (indicating that OEA and MB would release a public notice listing the singleton applications received for Auction 111); id. at 48, para. 170 (declining to require winning bidders to file separate long-form applications).

## II. LIMITED SETTLEMENT OPPORTUNITY

5. **Prohibited Communications.** The prohibition on certain communications set forth in sections 1.2105(c) and 73.5002(d) and (e) of the Commission’s rules became effective for short-form applicants in MX Group 21 at 6:00 pm Eastern time (ET) on November 9, 2021, the deadline for filing short-form applications.<sup>13</sup> As provided by Commission rules,<sup>14</sup> we hereby partially suspend the application of the prohibition on certain communications to the extent necessary to facilitate the limited settlement opportunity. This suspension is limited in scope. Specifically, during the settlement period, an applicant listed in Attachment A may discuss potential settlement of its mutually exclusive long-form application with the other applicant in its MX group. Each applicant listed in Attachment A remains subject to the prohibition on certain communications with regard to communications not related to settlement of the pending long-form applications that otherwise would be prohibited by the rule. After the settlement period closes on November 30, 2021, the prohibition on certain communications will again take full effect.

6. **Settlements.** Any resolution of the mutual exclusivity of a group of applications must result in only one surviving application for an LPTV/translator station construction permit (FCC Form 2100 – Schedule C, i.e., long-form application).<sup>15</sup> Accordingly, engineering solutions that completely resolve the mutual exclusivity of the group but result in more than one surviving long-form application will not be permitted.<sup>16</sup> Applicants may resolve their mutual exclusivity through a legal settlement that provides for the dismissal of all but one of the long-form applications in their MX group. Such agreements must be submitted for Commission approval. Parties submitting a legal settlement for approval must ensure that their agreements comply with the provisions of section 311(c) of the Communications Act of 1934, as amended, and the pertinent requirements of section 73.3525 of the Commission’s rules, including, *inter alia*, the settlement reimbursement restrictions.<sup>17</sup> Parties filing a request for approval of settlement agreement must include a copy of their agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth: (1) the reasons why such agreement is in the public interest; (2) a statement that each party’s application was not filed for the purpose of reaching or carrying out such agreement; (3) a certification that neither the dismissing applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; (4) the exact nature and amount of any consideration paid or promised; (5) an itemized accounting of the expenses for which it seeks reimbursement; and (6) the terms of any oral agreement relating to the dismissal or withdrawal of its application.<sup>18</sup>

7. Requests for approval of a settlement agreement and the above-outlined documents required by section 73.3525 must be submitted (1) as part of the request for dismissal of the pending long-form application(s) to be dismissed and (2) in the form of an amendment to the surviving long-form application in the Media Bureau’s Licensing and Management System (LMS) by **11:59 pm ET on November 30, 2021**. Requests for approval of a settlement agreement submitted after November 30, 2021, will not be accepted, and parties will only be able to proceed by bidding in the auction. In addition,

<sup>13</sup> See 47 CFR §§ 1.2105(c), 73.5002(d), (e).

<sup>14</sup> See *id.* § 73.5002(d).

<sup>15</sup> Auction 111 Procedures Public Notice at 33-34, para. 100.

<sup>16</sup> *Id.*

<sup>17</sup> See 47 U.S.C. § 309(j); 47 CFR § 73.5000(a); see generally, *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920 (1998).

<sup>18</sup> 47 CFR § 73.3525(a).

any settlement discussions or negotiations between short-form applicants after **11:59 pm ET on November 30, 2021**, would be a violation of the Commission’s prohibition of certain communications. We encourage parties to file their settlements as early as possible in the window; the limited suspension of the prohibition of certain communications will take effect after November 30 and will apply to all Auction 111 applicants, including those that may have pending settlement agreements.

8. **Unilateral Dismissal.** An applicant that seeks to unilaterally dismiss its long-form application without having entered a settlement agreement with another applicant must submit an affidavit with its dismissal request as to whether or not consideration has been promised to, or received by, the applicant.<sup>19</sup>

### III. CONTACT INFORMATION

9. For additional information, contact Shaun Maher of the Video Division of MB at (202) 418-2324. For information on the FCC Form 175 or application of the rules on prohibited communications, contact Lyndsey Grunewald or Scott Mackoul in the Auctions Division of OEA at (202) 418-0660. For general auction information, contact the Auctions Hotline at (717) 338-2868.

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<sup>19</sup> *Id.* § 73.3525(c).