



# PUBLIC NOTICE

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DA 21-483  
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## RELAXED EQUITY/DEBT PLUS ATTRIBUTION STANDARD AVAILABLE IN AUCTION 109

### AU Docket No. 21-39

1. By this Public Notice, the Media Bureau, in conjunction with the Office of Economics and Analytics, confirms that applicants in Auction 109 may apply the relaxed Equity/Debt Plus (EDP) attribution standard in determining their eligibility for a new entrant bidding credit. Auction 109 is an auction of AM and FM broadcast construction permits for which bidding is scheduled to start on July 27, 2021.<sup>1</sup>

2. The relaxed EDP attribution standard is a component of the Commission's rules promoting broadcast station ownership by small businesses and potential new entrants.<sup>2</sup> One of those rules provides a tiered bidding credit for broadcast auction applicants with no, or very few, other mass media interests ("new entrants").<sup>3</sup> To determine an applicant's eligibility for a new entrant bidding credit, the Commission attributes to the applicant the media interests of certain substantial holders of equity and/or debt in the applicant.<sup>4</sup> In general, an investor's or creditor's mass media interests are attributed to an applicant if the investor's or creditor's equity and debt interests, in the aggregate, exceed 33% of the applicant's total asset value.<sup>5</sup> Under the relaxed EDP standard, however, an investor in, or creditor of, an applicant that is an "eligible entity"—an entity that meets the revenue-based eligibility standard defined in section 73.5008(c) of the Commission's rules—may exceed the 33% equity and debt threshold without triggering attribution in certain circumstances.<sup>6</sup> This relaxed EDP standard was unavailable to applicants

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<sup>1</sup> Any party seeking to participate in Auction 109 must submit a short-form application (FCC Form 175) by 6:00 p.m. ET, on May 11, 2021, and must otherwise comply with the rules and policies governing this auction as described in the *Auction 109 Procedures Public Notice. Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, DA 21-361 (OEA/MB Apr. 2, 2021) (*Auction 109 Procedures Public Notice*).

<sup>2</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922, 5931, 5935-37, paras. 17, 29-34 (2008); 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, MB Docket No. 14-50, Second Report and Order, 31 FCC Rcd 9864, 9980, para. 280 (2016).

<sup>3</sup> 47 CFR § 73.5007 (new entrant bidding credit); see generally *Auction 109 Procedures Public Notice* at 18-21, paras. 54-62.

<sup>4</sup> 47 CFR § 73.5008(c); see also, *id.* § 73.3555 note 2(i).

<sup>5</sup> See 47 CFR § 73.5008(c)(1).

<sup>6</sup> 47 CFR § 73.5008(c)(2). Under the relaxed standard, an investor/creditor's media interests are not attributed to an applicant that is an "eligible entity" if either (a) the investor/creditor's total equity and debt interest in the applicant is less than 50% of the applicant's total asset value, or (b) the creditor's debt interest in the applicant is 80% or less (continued....)

in recent auctions due to ongoing litigation,<sup>7</sup> which was resolved by a recent U.S. Supreme Court decision that, *inter alia*, restored the revenue-based “eligible entity” definition and the regulatory measures to which it is applied.<sup>8</sup>

3. With the restoration of the eligible entity definition as applied to the relaxed EDP standard, the short-form application (FCC Form 175) for Auction 109 requires each applicant that seeks a new entrant bidding credit to respond “yes” or “no” to the “Eligible Entity” Election question in order to indicate whether the applicant claims to be an “Eligible Entity” as defined in section 73.5008(c) of the rules. Additional information regarding completing this election is available in the Auction Application System (1) by clicking on the **Help** link in the *New Entrant Eligibility* section of the application or in the upper right corner of any screen, which will open Auction Application Online Filing Help; or (2) by clicking on the text of any relevant Common Questions link appearing on the right side of the *New Entrant Eligibility* screen.

4. For further information, email [auCTION109@fcc.gov](mailto:auCTION109@fcc.gov) or contact the FCC Auctions Hotline at (888) 225-5322, option two; or (717) 338-2868. Direct press inquiries to Janice Wise at (202) 418-8165.

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of the applicant’s total asset value, and the creditor has no equity interest in the “eligible entity” applicant and does not have an option or promise to obtain an equity interest. *Id.*

<sup>7</sup> See, e.g., *Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 106*, AU Docket No. 19-290, Public Notice, 34 FCC Rcd 11993, 12012, para. 57 & n.107 (MB/OEA 2019) (relaxed EDP standard unavailable in Auction 106 due to pending litigation, citing *Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d Cir. 2019)).

<sup>8</sup> *FCC v. Prometheus Radio Project*, 141 S.Ct. 1150, 1160 n.4 (2021).