

Before the
Federal Communications Commission
Washington, D.C. 20554

Released: November 7, 1994

PUBLIC NOTICE

COMMISSION ANNOUNCES THAT MUTUALLY EXCLUSIVE "SHORT FORM" APPLICATIONS (FORM 175) TO PARTICIPATE IN COMPETITIVE BIDDING PROCESS ("AUCTIONS") ARE TREATED AS EXEMPT FOR EX PARTE PURPOSES

In the *Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348 (1994), *recon. Second Memorandum Opinion and Order*, FCC 94-215 (released August 15, 1994), the Commission adopted general rules to implement the authority conferred in the Omnibus Budget Reconciliation Act of 1993 to employ competitive bidding ("auction") procedures to choose among mutually exclusive applications for initial licenses. Under section 1.2105 of the new rules, the Commission requires applicants, in order to be eligible to bid, to submit a short-form application (FCC 175), together with any appropriate filing fee set forth by Public Notice. Section 1.2102 of the rules sets forth which services or classes of services of "mutually exclusive initial applications" will be subject to competitive bidding.

We have received inquiries from applicants and members of the public concerning which *ex parte* procedures apply to these applications, particularly in view of the fact that section 1.1208 of the Commission's *ex parte* rules ordinarily treats "mutually exclusive applications" as "restricted." (In restricted proceedings, no *ex parte* presentations directed to the merits or outcome of the proceeding are permissible unless such presentations are exempted under the rules.) Neither the *Second Report and Order* nor other related actions in PP Docket No. 93-253 addressed the question of the proper *ex parte* procedures that should apply to these application proceedings.

Auction proceedings differ from other types of application proceedings before the Commission from the standpoint of the magnitude and complexity of this new process and its implementation. Because the auction process is new to the Commission, applicants and members of the public have numerous, wide-ranging questions concerning the Commission procedures and requirements that apply to competitive bidding. We believe it is desirable, therefore, to facilitate and encourage a free flow of information between applicants and the Commission staff concerning these matters. Moreover, because auctions, rather than comparative hearings, are used to select among these mutually exclusive applicants, it seems unnecessary to employ the same procedural protections that ordinarily apply in other proceedings involving mutually exclusive applications.

For these reasons, we are not treating mutually exclusive short form applications (Form 175) filed pursuant to section 2.105 of the rules as restricted proceedings under section 1.1208 of the Commission's *ex parte* rules. Instead, we are treating these mutually exclusive applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that generally pertain to restricted pro-

ceedings. Proceedings involving auction applicants will become restricted, however, at such time as the required long form application is filed and has been formally opposed. See section 1.1208(c)(1)(i)(B). Moreover, particular proceedings relating to auction applications could become restricted for reasons unrelated to mutual exclusivity, e.g., waiver requests or similar pleadings that are filed and relate to the short form applications would be restricted if such waiver or other similar pleading is formally opposed, as defined in the *ex parte* rules. See sections 1.1202(e) and 1.1208(c)(1)(ii)(D); also sections 1.1204(a)(2)(ii) Note and 1.1208(b)(2).

Action by the Commission November 4, 1994, by Public Notice (FCC 94-283) by Chairman Hundt, Commissioners Quello, Barrett, Ness and Chong.

News Media contact: Rosemary Kimball (202) 418-0500. Office of General Counsel contact: Steve Bailey (202)418-1720.

FEDERAL COMMUNICATIONS COMMISSION