

## ATTACHMENT A

### Short-Form Application (FCC Form 175) Preparation and Submission

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. Applicants may file FCC Form 175 applications electronically beginning at 9:00 a.m. ET on October 1, 2007. The Form 175 filing system generally will be open on a 24-hour basis. **Short-form applications must be submitted and confirmed prior to 6:00 p.m. ET on October 5, 2007.** Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Late applications or unconfirmed submissions of electronic data will not be accepted.

The information collected in connection with applications to participate in spectrum auctions is necessary to determine each applicant's qualifications, and will be made available for public inspection. Accordingly, an applicant should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its short-form application. Applicants may 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 (the "Rules").<sup>1</sup> Pursuant to Section 0.459(a) of the Rules, such a request must be included as an attachment to the short-form and must specifically identify the information to which the request applies. Because the required information bears on an applicant's qualifications, confidentiality requests will not be routinely granted.

Applicants may amend their short-form applications multiple times until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

This Supplemental AM Auction 84 filing window is limited to the submission of new FCC Form 175 applications for the specific AM facilities described in the text of this Public Notice. Applicants are prohibited from using this supplemental filing window to amend applications previously filed in the initial AM Auction 84 Filing Window of January 2004.

### Software Requirements

Applicants must meet the following minimum software requirements:

- Web Browser, either of the following:
  - Microsoft<sup>®</sup> Internet Explorer 6.0 or higher (recommended)
  - Netscape<sup>®</sup> Communicator<sup>™</sup> 6.0 or higher

Other browsers are not supported.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

Currently, the Apple<sup>®</sup> Mac OS<sup>®</sup> is not supported.

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<sup>1</sup> 47 C.F.R. § 0.459.

## A. Logging On

To submit an FCC Form 175 application electronically via the FCC Auction System, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Integrated Spectrum Auction System* page, an applicant may log-in to create an FCC Form 175 application using its FCC Registration Number (FRN) and password. On the *My Auctions* page, click the Enter Auction Application Manager link and select the Auction 84 link to view/update your electronic FCC Form 175.

## B. Application Filing Instructions

The information collected in connection with the FCC Form 175 is required to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.<sup>2</sup> Pursuant to Section 1.2105(a) of the Rules, the FCC Form 175 must be submitted electronically. Applicants must submit the required information as an entry in a data field of the electronic FCC Form 175 whenever a data field is available for that information entry. Attachments should not be used to provide information that can be supplied within the discrete data fields of the electronic FCC Form 175.

For this Supplemental AM Auction 84 filing window, the screens comprising the FCC Form 175 consist of five series, four of which include information requests:

- 1) *Applicant Information*
- 2) *Engineering Proposals*
- 3) *New Entrant Eligibility*
- 4) *Summary*
- 5) *Certify and Submit*

The fourth series, the *Summary* screens, provide an overview of an applicant's FCC Form 175 that facilitates reviewing and revising specific information.

- **Ownership and Agreements Information.** Note that for this Supplemental AM Auction 84 filing window only, the online FCC Form 175 does not provide screens for disclosing ownership or agreements information. An applicant must provide this information in separate attachments, which must be added to the FCC Form 175. See Section 5 below for further details.<sup>3</sup>

In filling out the FCC Form 175, certain initial information that an applicant provides is used to determine what additional information is needed. Based on the responses to certain initial questions, the system determines what subsequent screens will appear to collect the additional information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application. If initial information identifies the applicant as an individual, no additional information is needed regarding an additional responsible party. Consequently, in the case of an individual applicant, screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens will ask for additional responsible party information. Accordingly, in filling out the FCC Form 175, in some instances an applicant must provide initial information before proceeding to subsequent screens.

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<sup>2</sup> See generally 47 C.F.R. § 1.2105.

<sup>3</sup> Because ownership and agreement information will be submitted as separate attachments, the automated check for inconsistencies and omissions in submitted information will not be available to the same extent for this supplemental filing window as has been available for short-form applications filed for many recent auctions.

Applicants should complete the FCC Form 175 by following the instructions below. Additional help can be accessed from within the FCC Form 175 by either: (1) clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or (2) clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions vary from screen to screen and relate to the screen that is displayed.

## 1. Applicant Information

The *Applicant Information* screens are the first series of screens in the FCC Form 175. Here, the applicant will provide basic information, including:

- The applicant's legal classification, e.g., individual, corporation, etc.
- Optional information regarding the applicant's status as a minority or woman-owned business or a rural telephone company.
- Whether the applicant requests Noncommercial Educational election. This response (yes or no) is mandatory.<sup>4</sup> **Note that no applicant will be allowed to change its NCE election after the application filing deadline specified in this public notice.**
- The applicant's name, which will be used as the bidder name during the auction.
- Citizenship (for individuals) or jurisdiction of formation (for legal entities).
- For applicants classified as legal entities – e.g., corporations – the name and information regarding the entity's responsible individual.
- The name, address, telephone and facsimile numbers of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175.
- 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.

Please note the following with respect to the information requested:

- An applicant must indicate its legal classification before continuing to subsequent screens, because this information will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.

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<sup>4</sup> 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. *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, Second Report and Order, 18 FCC Rcd 6691, 6699-6700 (2003) ("*NCE Second Report and Order*"), recons. pending; *see also* 47 C.F.R. § 73.5002 (b). In the *NCE Second Report and Order*, the Commission determined that short-form applicants that do not identify themselves on their FCC Form 175 as "noncommercial educational" will be considered as a matter of law to be applicants for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700.

- To simplify filling out Form 175, an applicant that has the same address as its responsible party can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the address on the Responsible Party page. P.O. Boxes may not be used for a responsible party's address.
- P.O. Boxes may not be used for a contact person's address. An applicant may also use the **COPY APPLICANT ADDRESS** button on the Contact Information page, to automatically fill in the contact person's address when it is identical to the applicant's address.
- An applicant must identify at least one authorized bidder. An applicant may change its authorized bidders at a later date; however, only those bidders listed on the Form 175 will be authorized to place or withdraw 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 for telephonic bidding.

## 2. Engineering Proposals

The *Engineering Proposals* screens make up the second series of screens in the FCC Form 175. Here, the applicant will be required to submit the following technical information:

- A description of the engineering proposal and its application purpose (either **NEW** or **Major Change in Licensed Facility** or **Major Modification of Construction Permit** for this auction).
- If the application purpose is Major Change in Licensed Facility, then information identifying the existing facility, including File Number, Facility ID and Call Sign (any two) is required.
- If the application purpose is Major Modification of Construction Permit, then information identifying the construction permit, the File Number, and either the Facility ID or Call Sign is required.
- General information about the proposed facility, including city, state, and technical specifications such as frequency, class, and antenna location coordinates.
- The antenna type (nondirectional or directional).
- For a non-directional antenna, the antenna RMS and antenna tower height.
- For a directional antenna, the number of towers, theoretical parameters (e.g., field ratio, phase, spacing), and antenna RMS.

Once the Engineering Proposal has been created, the applicant will return to the View/Edit *Engineering Proposals* screen. From this page, the applicant may:

- Modify information regarding the engineering proposal or antenna mode by clicking on the corresponding link.
- Add additional antenna modes as needed.

- Delete the engineering and all information associated with it by clicking on the **Delete this proposal** link.
- Remove an antenna mode and all information associated with that mode from the engineering proposal by clicking on the **Remove** icon.
- Add additional engineering proposals by clicking on the **CREATE NEW PROPOSAL** button.

### 3. New Entrant Bidding Credit Eligibility

The *New Entrant Eligibility* screens are the third series of screens in Form 175. On the initial screen, the 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.

An applicant claiming either no New Entrant bidding credit or a 35 percent New Entrant bidding credit, will not need to provide any additional information. Such applicants will continue to the next series of screens.

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>5</sup> The applicant must identify:

- The existing mass media facility or facilities.
- The individual or entity in the applicant with the attributable interest in the existing mass media facility.
- The attributable interest in the existing facility.
- Whether any broadcast facilities proposed in this short-form application are in the “same area” as existing mass media facilities, as defined by applicable Commission Rules.<sup>6</sup>
- In the event that the applicant indicates that any of the broadcast facilities proposed in this short-form application are in the “same area” as the identified existing mass media facility, the applicant will continue to an additional screen where the applicant must indicate which proposed broadcast facility in the auction is in the “same area” as the identified existing mass media facility.

Once the applicant has identified all relevant existing mass media facilities, and all broadcast facilities proposed in its short-form application in the “same area” as each relevant existing mass media facility, the applicant 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 proposed

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<sup>5</sup> Full-service noncommercial educational stations, on both reserved and nonreserved channels, are included among “media of mass communications” as defined in 47 C.F.R. §73.5008(b). *See Minnesota Christian Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 614 (2003), *aff’d sub nom Carol DeLaHunt v. FCC*, 411 F.3d 283 (D.C. Cir. 2005). However, pursuant to 47 C.F.R. § 73.5007, attributable interests in existing low power television, television translator, or FM translator facilities will not be counted as mass media interests in determining eligibility for a New Entrant bidding credit.

<sup>6</sup> *See* 47 C.F.R. §§ 73.5007, 73.5008.

broadcast facilities in the “same area” as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Edit** icon or the **Modify bidding credit selection** link to return to the initial New Entrant bidding credit eligibility screen.
- Modifying information about relevant mass media facilities by clicking on them.
- Clicking the **Delete This Facility** link to delete a facility and identified proposed broadcast facilities in the “same area.”
- Modifying information regarding a proposed broadcast facility by clicking on its identifier.
- Clicking the **Remove** icon next to information about a particular proposed broadcast facility in the “same area” to remove the corresponding facility.
- Clicking the **Add a proposed “Same Area” Facility to [an existing mass media facility]** link to add a new proposed broadcast facility in the “same area.”
- Clicking the **CREATE NEW MASS MEDIA FACILITY** button to add additional mass media facilities.

When all relevant existing mass media facilities, and proposed broadcast facilities in the “same area” as each relevant existing mass media facility have been identified, click the **CONTINUE** button.

#### 4. Summary

The *Summary* screens are the fourth series of screens in the FCC Form 175. The *Summary* screens summarize information the applicant has provided in previous screens, offering an overview of the applicant’s FCC Form 175 to help locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens in order to permit the applicant to review the information entered in previous screens and to provide an opportunity to check for errors in the information submitted.

The first *Summary* screen, the *Summary Overview* screen, lists the first three series of screens in the application and provides a **VIEW/EDIT** button to access each one.

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing what you entered for each data entry field. To change any data item, click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Engineering Proposals takes you to the *View/Edit Engineering Proposals* screen discussed above in the Engineering Proposal section.
- Clicking **VIEW/EDIT** for New Entrant Eligibility takes you to the *View/Edit New Entrant Eligibility* screen discussed above in the New Entrant Eligibility section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters certain types of errors that must be corrected before submitting the application, the error(s) will be listed in an Error box at the top of the screen. If the automated check encounters certain types of apparent errors that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the error(s), click the corresponding **EDIT** button.

Each applicant is responsible for providing complete and accurate information in its FCC Form 175. The automated check is provided to assist an applicant in completing its FCC Form 175. 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, including the omission of required information.

## 5. Ownership and Joint Bidding Agreement Attachments

The FCC Form 175 screens for the Supplemental AM Auction 84 filing window do not include data entry fields for an applicant to provide either ownership or joint bidding agreement information. **Therefore, the applicant must create two separate attachments to provide both ownership and joint bidding agreement information. The applicant must then add these two attachments to the FCC Form 175.**

### a. Ownership Disclosure Requirements

- **Sections 1.2105 and 1.2112(a) of the Rules list the interest holders in the applicant that must be disclosed in its FCC Form 175.**<sup>7</sup>
- **Section 1.2112(a)(7) of the Rules lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in the FCC Form 175.**<sup>8</sup>

The Commission indicated in the *Broadcast First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply.<sup>9</sup> Therefore, in completing the FCC Form 175 for Supplemental AM Auction 84, all applicants are required to file an “Attachment A” and provide information required by Sections 1.2105 and 1.2112 of the Rules, providing a full and complete statement of the ownership of the bidding entity.

Applicants must disclose the following:

- All real parties in interest in the applicant, including the identity and relationship of those persons or entities directly or indirectly owning or controlling the applicant.
- Name, address, and citizenship of any party directly or indirectly holding a 10 percent or greater interest in the applicant, as well as the percentage of interest held in the applicant and whether the interest is an indirect or direct interest.
- If there is an indirect interest in the auction applicant of 10 percent or greater, the attachment must describe the relationship between the indirect interest holder and the auction applicant.
- Whether the party directly or indirectly holding a 10 percent or greater interest in the applicant has voting or non-voting, common or preferred, stock and the specific amount of interest held.

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<sup>7</sup> 47 C.F.R. §§ 1.2105, 1.2112(a).

<sup>8</sup> 47 C.F.R. § 1.2112(a)(7).

<sup>9</sup> 47 C.F.R. § 73.5002 specifies the bidding procedures, certification requirements and the anti-collusion rules applicable to mutually exclusive applications for commercial broadcast services subject to auction. Subsection (b) requires the timely submission of short-form applications, along with all required certifications, information, and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. 47 C.F.R. § 1.2105, in turn, requires the disclosure on the short-form application of applicant ownership information as set forth in 47 C.F.R. § 1.2112.

- Any FCC-regulated entity or applicant for an FCC license, in which the auction applicant or any real party in interest in the auction applicant owns a 10 percent or greater interest. Such disclosure must include a description of the FCC-regulated entity’s principal business and its relationship to the auction applicant.

**b. Consortia and Joint Bidding Agreements**

An applicant is required to identify in its short-form application any party with whom it has entered into any consortium agreements, joint ventures, partnerships, or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure.<sup>10</sup> The applicant is also required to certify in its short-form application that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind with any parties, other than those identified, regarding the amount of its bids, bidding strategies, or the particular construction permits on which it will or will not bid.<sup>11</sup> If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions after the application deadline.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding agreement with other applicants for construction permits in the same market provided that: (1) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of an applicant in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants.<sup>12</sup> While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.<sup>13</sup> Such subject areas include, but are not limited to, management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

All applicants must submit an “Attachment B” to the FCC Form 175, disclosing any such agreement and party information as indicated above. Provision of an agreement party's FCC Registration number is optional, but speeds processing of the FCC Forms 175. If an applicant has not entered into consortia or joint bidding agreements, the Attachment B should so state.

**6. Other Attachments**

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, such additional information can be provided in an attachment. Attachments should not be used to provide information that can be directly supplied within data fields on the screens comprising the FCC Form 175.

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<sup>10</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

<sup>11</sup> 47 C.F.R. § 1.2105(a)(2)(ix).

<sup>12</sup> 47 C.F.R. § 1.2105(c)(4)(i), (ii).

<sup>13</sup> See *Todd Stuart Noordyk*, Memorandum Opinion and Order, 16 FCC Rcd 18113, 18117 (2001). See also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 467 (1997).

### a. File Formats for Attachments

When adding attachments, an applicant may use a variety of file formats, including, but not limited to: Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text. Applicants must verify that the files contain all exhibit information. Files may be no larger than 10 Mb. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended. Files must not be password-protected.

### b. Adding an Attachment to FCC Form 175

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right section of any screen. The *Add Attachment* screen requests information regarding the type of attachment, the name of the file, and a brief description of the attachment. If the attachment is a request for a waiver of any of the Commission's rules and procedures, the applicant must identify the **Type** of attachment as a “Waiver” to facilitate prompt processing. For attachments which do not contain a waiver request, the applicant should identify the type of attachment as **Other**. Once the requested information is provided, the applicant can add the attachment to the application by clicking on the **ADD ATTACHMENT** button.

## 7. Certify and Submit

The *Certify and Submit* screens are the fifth and final series of screens in FCC Form 175. In the *Certify and Submit* screens, an applicant will provide certifications required of all participants in the Commission’s competitive bidding process.<sup>14</sup>

The first *Certify and Submit* screen requires an applicant to state under penalty of perjury whether it, its affiliates, its controlling interests, or any affiliates of its controlling interests, as defined by 47 C.F.R. § 1.2110, have ever been in default on any Commission license, or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>15</sup> An applicant associated with an individual or entity that has been in default or delinquent, but that have since remedied all such defaults and cured all such outstanding non-tax delinquencies, may participate in an auction, if otherwise qualified. However, such an applicant must submit an upfront payment equal to 50 percent more than otherwise required.<sup>16</sup>

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission’s competitive bidding process and requests that the applicant’s certifying official be identified and sign the application. Any auction short-form application must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio

<sup>14</sup> See generally 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

<sup>15</sup> See 47 C.F.R. §§ 1.2105(a)(2)(xi), 1.2110 ; see also *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, 15 FCC Rcd 15293, 15 FCC Rcd at 15317 ¶ 42 and n.142 (2000) (modified by Erratum, DA 00-2475 (WTB Nov. 3, 2000)) (“*Fifth Report and Order*”).

<sup>16</sup> See 47 C.F.R. § 1.2106(a). If the applicant, an affiliate of the applicant, a controlling interest of the applicant, or an affiliate of a controlling interest are in default on any payment for any Commission construction permit or license or are delinquent on any non-tax debt owed to any Federal agency as of the short-form application filing deadline, the applicant will not be eligible to participate in the auction. See 47 C.F.R. § 1.2105(a)(2)(x).

service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.<sup>17</sup>

All applicants must certify on their FCC Form 175 applications, under penalty of perjury, that they are legally, technically, financially and otherwise qualified to hold a license.<sup>18</sup> Applicants are reminded that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of 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. Moreover, as noted above, a change of certifying official is considered a major change of the short-form application and will not be permitted after the short-form application filing deadline. 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.

Once the two *Certify and Submit* screens have been filled out and reviewed, the application may be submitted by clicking on the **SUBMIT** button. An applicant must click the **SUBMIT** button for the FCC Form 175 application or any changes to the application to be submitted and considered by the Commission.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on October 5, 2007. Late applications or unconfirmed submissions of electronic data will not be accepted.

## **8. Withdrawing an Application Before the Short-Form Filing Deadline and Updating Existing Applications**

Applications submitted in this Supplemental AM Auction 84 filing window may be withdrawn or updated before the short-form filing deadline. Form 175 applications that had been previously filed in the initial AM Auction 84 filing window in January of 2004 may not be withdrawn or updated during this supplemental window.

### **a. Withdrawing a Supplemental AM Auction 84 Application**

If you wish to withdraw an application submitted in this Supplemental AM Auction 84 window before the short-form application filing deadline, click on the **Withdraw Application** icon on the *Auction Application Manager Create or Review Auction Applications* page and confirm that you want to withdraw your application. If you subsequently decide to file an application, you will have to re-enter all previously submitted data. Applications may not be withdrawn after the short-form application filing deadline.

### **b. Updating Existing Supplemental AM Auction 84 Applications**

Once you have logged into the Auction Application Manager, the *Create or Review Auction Applications* page displays any application you have created or submitted within a filing window. This page shows

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<sup>17</sup> See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

<sup>18</sup> See 47 C.F.R. § 1.2105(a)(2)(v).

the application status, the date and time the application was last updated, and the date and time the application was last submitted. You may use this page to confirm the date and time of your most recent submission of the application.

To review or continue working on an existing Supplemental AM Auction 84 application, click its auction number. This produces the application's Summary page and places you in a view/edit mode. An applicant must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their Form 175. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with your unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

After the short-form application filing deadline (6:00 p.m. ET October 5, 2007) an applicant may make only minor changes to an application, as such changes are defined by Section 1.2105(b). An applicant will not be permitted to make major modifications to an application (*e.g.*, make any changes to the engineering proposals, change the certifying official, change control of the applicant, change the noncommercial educational election, or seek an increase in the percentage of a previously-claimed new entrant bidding credit).<sup>19</sup> Permissible minor changes include the deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of applicants and contact persons.

An applicant should make permissible minor modifications to the FCC Form 175 electronically, using the FCC Auction System.<sup>20</sup> If the applicant cannot make the modification to its application using the FCC Auction System, until the applicant can update its electronic application, the applicant must submit a letter, briefly summarizing the change, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction84@fcc.gov](mailto:auction84@fcc.gov). The electronic mail summarizing the change must include a subject or caption referring to Auction 84. The Bureaus request that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft Word<sup>®</sup> documents. Questions about other changes should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

## **9. Maintaining Current Information in FCC Form 175.**

Applicants have an obligation under Section 1.65 of the Rules,<sup>21</sup> to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by Section 1.2105(b)(2) of the Rules, will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.<sup>22</sup>

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<sup>19</sup> See 47 C.F.R. § 1.2105.

<sup>20</sup> An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

<sup>21</sup> 47 C.F.R. § 1.65.

<sup>22</sup> For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. See *Liberty Productions, a Limited Partnership*, Memorandum Opinion and Order, 16 FCC Rcd 12061, 12078; *stay denied*, 16 FCC Rcd 18966 (2001), *aff'd sub nom.*, *Biltmore Forest Broadcasting FM, Inc. v. FCC*, 321 F.3d 155 (D.C. Cir.), *cert. denied*, 540 U.S. 981 (2003). Events occurring after the short-form application filing deadline, such as the acquisition of attributable interests in media of mass communications, also may cause diminishment or loss of the bidding credit, and must be reported immediately.

### C. Application Review

Once the FCC has completed the short-form application review process, you can view FCC Form 175 applications electronically by searching the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page to start your search. Prior to the filing deadline, an applicant may only review its own completed FCC Form 175. An applicant may review its own and other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice concerning the status of the applications. There are no fees for accessing the Form 175 filing or review system.

### D. Prohibition of Collusion

To ensure the competitiveness of the auction process, Section 1.2105(c) of the Rules prohibits competing applicants from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii) of the Rules.<sup>23</sup> Thus, competing applicants must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.<sup>24</sup> This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.<sup>25</sup>

To the extent provided in Sections 73.5002(d)(1) and (2) of the Rules, AM applicants who file major modifications that are mutually exclusive, and AM applicants who file major modifications and new station applications that are mutually exclusive, may communicate with each other for the purpose of resolving conflicts by means of engineering solutions or settlements only during the time period prescribed by the Bureaus. The precise period for pre-auction settlement of mutually exclusive applications will be specified in a later public notice.<sup>26</sup>

For purposes of this prohibition, Section 1.2105(c)(7)(i) of the Rules defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction,<sup>27</sup> as well as all controlling interests in that entity and all holders of partnership and other ownership interests

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<sup>23</sup> 47 C.F.R. § 1.2105(c)(1); 47 C.F.R. § 1.2105(a)(2)(viii). *See also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Seventh Report and Order, 16 FCC Rcd 17546 (2001) ("*Seventh Report and Order*"); Fifth Report and Order, 15 FCC Rcd at 15297-87.

<sup>24</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>25</sup> *See, e.g., Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18628 ¶ 4 n.19 (EB 2004), application for review pending (collusion rule applies to applicants regardless of whether they are qualified to bid); *Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division*, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>26</sup> 47 C.F.R. § 73.5002(d).

<sup>27</sup> *See, e.g., Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener*, 20 FCC Rcd 14648 (Video and Auctions Divs. 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.<sup>28</sup>

Applicants competing for construction permits in either the same geographic license area or the same MX group are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rules could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, the applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that the applicants and their bidding agents will comply with the anti-collusion rule.<sup>29</sup> However, the Bureaus caution that merely filing 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>30</sup>

The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for construction permits for either the same geographic license area or the same MX group. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175.<sup>31</sup> If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to Section 1.2105(c) of the Rules, even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for construction permits for either the same geographic license area or the same MX group.<sup>32</sup> By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Sections 1.2105(c) and 73.5002 of the Rules.<sup>33</sup>

An applicant is required by Section 1.65 to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>34</sup> Thus, Section 1.65 of the Rules requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) of the Rules requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if

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<sup>28</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>29</sup> See *Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11977 ¶ 11 (1998).

<sup>30</sup> See *id.* at 11978.

<sup>31</sup> 47 C.F.R. § 1.2105(c).

<sup>32</sup> See *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645 (1995).

<sup>33</sup> 47 C.F.R. §§ 1.2105(c), 73.5002.

<sup>34</sup> 47 C.F.R. § 1.65.

the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65 of the Rules.<sup>35</sup>

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.<sup>36</sup> Any applicant found to have violated the anti-collusion rules may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.<sup>37</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>38</sup>

#### **E. Technical Support**

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

#### **F. Contact Information**

##### **Audio Division, Media Bureau**

For broadcast service questions: Susan Crawford, Ann Gallagher or Lisa Scanlan at (202) 418-2700

##### **Auctions and Spectrum Access Division, Wireless Telecommunications Bureau**

For auction legal questions: Lynne Milne at (202) 418-0660

For general auction questions: Linda Sanderson at (717) 338-2868

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<sup>35</sup> 47 C.F.R. § 1.2105(c)(6); *see also Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>36</sup> 47 C.F.R. §§ 1.2107(d), 73.5005(a).

<sup>37</sup> *See* 47 C.F.R. § 1.2109(d).

<sup>38</sup> *Id.*