



# PUBLIC NOTICE

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

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

DA 07-93

January 25, 2007

## **AUCTION OF FM BROADCAST CONSTRUCTION PERMITS CLOSES**

### **Winning Bidders Announced for Auction No. 68**

**Down Payments due February 8, 2007**

**Final Payments due February 23, 2007**

**FCC Form 301 due February 26, 2007**

Report No. AUC-07-68-G (Auction No. 68)

On January 17, 2007, the Federal Communications Commission completed the auction of 9 FM broadcast construction permits (Auction No. 68), raising (in net bids) a total of \$3,264,250.00. In this auction, 9 winning bidders won a total of 9 permits.

This Public Notice provides detailed information concerning winning bidders, down payments, final payments and/or refunds, long-form application (FCC Form 301) filing requirements, requests for rule waivers, and licensing matters. Key information appears in the following attachments:

- Attachment A:** "Winning Bids" lists winning bidders and both their total gross and net winning bid amounts.
- Attachment B:** "Bidder Payment/Refund" lists down payments and final payments owed by winning bidders and refunds due, if any.
- Attachment C:** "Multi-Auction Withdrawal Payment" lists amount(s) or refund(s) due for bidders in Auction Nos. 37 and 62 based upon reconciliation of final results of Auction Nos. 37, 62, and 68.
- Attachment D:** "Default Payment" contains default payments based upon reconciliation of final results of Auction Nos. 37 and 68.

A copy of this Public Notice will be sent via overnight delivery to each qualified bidder.

#### **A. Down Payments**

The Commission's rules require that within ten business days after the release of this Public Notice, in this case by **6:00 p.m. Eastern Time (ET) on February 8, 2007**, winning bidders in Auction No. 68 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover down

payments on their winning bids.<sup>1</sup> If a winning bidder's upfront payment is not sufficient to meet this requirement, the winning bidder must deposit sufficient additional funds to meet its required down payment.<sup>2</sup>

The amount now due from each winning bidder, if any, is set out in the "Additional Amount Due after Upfront Payment Balance Applied Due by February 8, 2007" column of **Attachment B**. **Note that a payment and FCC Remittance Advice Form (FCC Form 159) are necessary only if a winning bidder's upfront payment does not cover the required total down payment (as reflected in Attachment B)**. Each winning bidder's total deposit must be twenty percent of the net amount of its winning bid.

## **B. Final Payments**

Each winning bidder will be required to submit the balance of the net amount of its winning bid by February 23, 2007,<sup>3</sup> as set out in the "Final Balance Due By February 23, 2007 or (Refund)" column of Attachment B. All winning bidders must pay the full amount of the Final Balance Due shown in Attachment B by **6:00 p.m. ET on February 23, 2007** (or by 6:00 p.m. ET on March 9, 2007, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).<sup>4</sup> Full and timely payment of winning bids and any applicable late fees must be made in accordance with Section 1.2109(a) and must occur before action will be taken upon a winning bidder's long-form application (FCC Form 301).<sup>5</sup> Specifically, construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 C.F.R. § 1.2109(a).

## **C. Method of Payment for Down and Final Payments**

All payments must be in U.S. dollars and made in the form of a wire transfer.<sup>6</sup> No personal checks, credit card payments, or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Form 159.<sup>7</sup>

Questions concerning the calculation and submission of down and final payments, the FCC Form 159, and refunds should be directed to Gail Glasser at (202) 418-0578.

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<sup>1</sup> See 47 C.F.R. § 1.2107(b).

<sup>2</sup> *Id.* In the event a bidder is subject to a bid withdrawal payment(s) from a prior auction, the bidder's upfront payment will be first applied to satisfy the withdrawal payment(s) before being applied toward its down payment. See 47 C.F.R. § 1.2104(g)(1).

<sup>3</sup> See 47 C.F.R. § 1.2109(a).

<sup>4</sup> *Id.*

<sup>5</sup> 47 C.F.R. § 1.2109. A winning bidder that is found unqualified to be a Commission licensee will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in Sections 1.2104(g)(2) or 1.2104(g)(3) of the Commission's rules, whichever is applicable. See 47 C.F.R. §§ 1.2104(g), 1.2109(c).

<sup>6</sup> A wire transfer is a transaction that you initiate through your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, Pennsylvania. Additional information on wire transfers is available on the Commission's web site at: <http://www.fcc.gov/fees/wiretran.html>.

<sup>7</sup> Copies of the FCC Form 159 may be obtained by calling the Commission's Forms Distribution Center at (800) 418-3676 (outside Washington, D.C.) or (202) 418-3676 (in the Washington D.C. area). Copies of the FCC Form 159 can also be obtained via the Internet (<http://www.fcc.gov/formpage.html>) or by calling from the handset of a facsimile machine the Commission's Fax Information System at (202) 418-2830.

To submit funds by wire transfer, winning bidders will need the following information:

ABA Routing Number: 043000261  
Receiving Bank: Mellon Pittsburgh  
500 Ross Street  
Pittsburgh, PA 15262  
BNF: FCC Account Number 911-6106  
OBI Field: (Skip one space between each information item) "AUCTIONPAY"  
APPLICANT'S FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)  
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A68D")  
FCC CODE 1: (same as FCC Form 159, Block 28A: "68")  
PAYOR NAME: (same as FCC Form 159, Block 2)  
LOCKBOX NO.: #358850

**1. Down Payment.** If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct down payment. Please note, however, that a winning bidder is responsible for ensuring timely submission of the correct down payment, timely filing of an accurate and complete FCC Form 159, and obtaining confirmation from its financial institution that Mellon Bank has timely received the down payment and deposited it into the proper account.

Wire transfers for down payments must be received by Mellon Bank **by 6:00 p.m. ET on February 8, 2007**. A winning bidder should coordinate with its financial institution ahead of time regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline.

At least one hour before placing the order for the wire transfer (but on the same business day), winning bidders must send by facsimile the completed FCC Form 159 to Mellon Bank at (412) 209-6045. Proper completion of the FCC Form 159 is critical to ensuring correct credit of bidder deposits. A winning bidder must use the same FCC Registration Number (FRN) used on its FCC Form 175.

Failure to complete this down payment process **by 6:00 p.m. ET on February 8, 2007** will result in default.<sup>8</sup>

**2. Final Payment.** If applicable, a partially completed copy of the FCC Form 159 will be sent to winning bidders to facilitate submission of the correct final payment. Please note, however, that a winning bidder is responsible for ensuring timely submission of the correct final payment, timely filing of an accurate and complete FCC Form 159, and obtaining confirmation from its financial institution that Mellon Bank has timely received the final payment and deposited it into the proper account.

Wire transfers of final payments must be received by Mellon Bank **by 6:00 p.m. ET on February 23, 2007** (or by 6:00 p.m. ET on March 9, 2007, along with the five percent late fee required by Section 1.2109(a) of the Commission's rules).<sup>9</sup> A winning bidder should coordinate with its financial institution ahead of time regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline.

Payments must be preceded by the completed FCC Remittance Advice Form (FCC Form 159). The winning bidder must send by facsimile, at least one hour prior to placing the order for the wire transfer,

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<sup>8</sup> See Section D.3., below.

<sup>9</sup> 47 C.F.R. § 1.2109(a).

but on the same business day that it pays the balance due to Mellon Bank, a completed FCC Form 159 to Mellon Bank at (412) 209-6045. On the FCC Form 159, the applicant must use the same FRN used on its FCC Form 175.

Failure to complete the final payment by **6:00 p.m. ET on March 9, 2007** (along with the five percent late fee, if applicable) will result in default.<sup>10</sup>

#### **D. Withdrawal, Default and Disqualification Payments**

The Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction, those that default on payments due after an auction closes, and those that are disqualified.<sup>11</sup>

**1. Bid Withdrawal Payments from Previous Auctions.** Because Auction No. 68 is closed, we have calculated and will assess certain final bid withdrawal payments owed as a result of withdrawals of provisional winning bids on construction permits in Auction Nos. 37 and 62.<sup>12</sup> These final bid withdrawal payments are identified in **Attachment C**. Any upfront payments or down payments that the withdrawing bidder deposited with the Commission will first be applied to satisfy the withdrawal payment amount(s) before being applied towards a winning bidder's down payment.<sup>13</sup> Forthcoming orders will assess such payments and will specify due dates for the payment of any such obligations.

**2. Default Payments from Previous Auctions.** Because Auction No. 68 is now closed, the Commission is in a position to calculate and assess final default payments owed as a result of the default on permits in Auction No. 37. These payments are identified in **Attachment D**. Forthcoming orders will assess such payments, and will specify due dates for the payment of any such obligations.

**3. Bid Default/Disqualification Payments from Auction No. 68.** If a winning bidder defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified), the defaulting bidder will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to ten percent of the defaulter's bid or the subsequent winning bid, whichever is less.<sup>14</sup>

If a winning bidder fails to remit the required down payment within ten business days after the Commission has released this Public Notice, in this case by February 8, 2007, the bidder will be deemed

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<sup>10</sup> See Section D.3., below.

<sup>11</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>12</sup> See 47 C.F.R. § 1.2104(g)(1); see also Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures, *Public Notice*, 20 FCC Rcd 10492, 10534 (MB/WTB 2005); Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 37, *Public Notice*, 19 FCC Rcd 10570, 10604 (MB/WTB 2004).

<sup>13</sup> See 47 C.F.R. § 1.2104(g)(1).

<sup>14</sup> See Auction of FM Broadcast Construction Permits Scheduled for January 10, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 68, AU Docket No. 06-101, *Public Notice*, 21 FCC Rcd 11144, 11181 ¶ 153 (MB/WTB 2006).

to have defaulted, its long-form application will be dismissed, and it will be liable for a default payment as described above.<sup>15</sup>

If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due.<sup>16</sup> When a winning bidder fails to pay the balance of its winning bid plus the late fee by the late payment deadline, it will be deemed to have defaulted on its construction permit(s) and subject to the applicable default payments.<sup>17</sup>

Construction permits will be awarded upon completion of the review of each applicant's long-form application and a determination that the application meets Commission requirements for grant, but only after the full and timely payment of winning bids and any applicable late fees.<sup>18</sup> If a winning bidder defaults on any of its required payments or is disqualified for any reason after having made the required payments, it will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in Section 1.2104(g)(2).<sup>19</sup>

Additionally, a bidder that is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of its upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions.<sup>20</sup>

#### **E. Refund of Excess Payments**

Upfront monies on deposit that are in excess of the required down payment, final payment and/or default payment amounts will be refunded to the payor of record as identified on the FCC Form 159 promptly at the close of the auction, if the necessary refund request and wire transfer instructions have been received. Applicants should provide this information by accessing the "See Wire Transfer for Refund Purposes" link under the Post-Auction section of the My Auctions web page prior to **February 23, 2007**. After this date, applicants must send a request for refund, along with the necessary wire transfer instructions and FRN, by facsimile to Gail Glasser of the Office of the Managing Director at (202) 418-2843. Any questions concerning refunds should be referred to Gail Glasser at (202) 418-0578.

#### **F. FCC Form 301**

**Deadline for Filing:** By **6:00 p.m. ET on February 26, 2007**, winning bidders must submit electronically a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), including required exhibits, for each FM construction permit for which they were the winning bidder in Auction No. 68.<sup>21</sup> **An applicant that fails to submit the required long-form application before the specified deadline, and fails to establish good cause for**

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<sup>15</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109(g)(2).

<sup>16</sup> 47 C.F.R. §§ 1.2109(a), 73.5003.

<sup>17</sup> See 47 C.F.R. §§ 1.2104(g)(2), 1.2109(a), 1.2109(c).

<sup>18</sup> See 47 C.F.R. §§ 1.2109(a), 73.5003.

<sup>19</sup> See 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

<sup>20</sup> See 47 C.F.R. § 1.2109(d).

<sup>21</sup> See 47 C.F.R. § 73.5005(a).

**any late-filed submission, shall be deemed to have defaulted and shall be subject to the payments set forth in Section 1.2104(g) of the Commission's rules.<sup>22</sup>**

***Where and How to File:*** Applicants must file accurate and complete FCC Form 301 applications *electronically* through the Media Bureau's Consolidated Database System (CDBS) online electronic filing system.<sup>23</sup> In accordance with the Commission's rules, electronic filing of FCC Form 301 must be accompanied by the appropriate application filing fee,<sup>24</sup> and information submitted on the new FCC Form 301 application by winning bidders must not constitute a major change from any information reported in the winning bidder's previously-filed FCC Form 175.<sup>25</sup> Instructions for use of the Media Bureau's electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing web site at:

**<http://www.fcc.gov/mb/cdbs.html>**

The Guide can be accessed by clicking on the CDBS link at the electronic filing web site, above. This action will take the user to the Media Bureau's CDBS Electronic Filing System site. The user should then click on the "Go to CDBS User's Guide" link. Internet access to the CDBS online electronic forms filing system requires, at a minimum, a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. When filing FCC Form 301, applicants must select "Long Form Application for FM Auction No. 68" on the Pre-form and enter the relevant short form application file number from CDBS (Question 2).<sup>26</sup> For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

**The Commission staff will return applications not submitted in accordance with the procedures described above. Applicants are encouraged to pay the FCC Form 301 application filing fee electronically using the CDBS filing system in order to avoid processing delays.<sup>27</sup>**

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<sup>22</sup> See 47 C.F.R. §§ 1.2104(g), 1.2107(c), 73.5005(c).

<sup>23</sup> For information regarding electronic application filing, refer to "Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314, and 315," *Public Notice*, 16 FCC Rcd 3989 (MMB 2001).

<sup>24</sup> See 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*, 13 FCC Rcd 15920, 15984 ¶ 164 (1998).

<sup>25</sup> See 47 C.F.R. §§ 73.3522, 73.3573.

<sup>26</sup> To obtain the short form application file number, go to CDBS Public Access ([http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs\\_pa.htm](http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm)) and select "Search for Application Information." In the Application Search page, in "File Number," enter "200611%" in the second box (leave the first box blank). In "Form" select "Short Form" from the pull-down menu. Enter the appropriate "Community of License City" and "State." Finally, in "Application Status" select "CP Requested" from the pull-down menu. Then, click on "Submit Application Search" at the bottom of the page. This will provide all of the Short Forms for that community of license. In the few instances with multiple allotments in the same community, an applicant can click on the "Info" hyperlinks in the results page to determine which Short Form is applicable to which applicant.

<sup>27</sup> Applicants also are reminded that the Commission's "red light rule" implementing the Debt Collection Improvement Act will be enforced. 47 C.F.R. § 1.1910. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. *Id.*; see also 47 C.F.R. § 1.2109(c) (post-auction defaults).

### G. Additional Post-Auction Filing Requirements

Section 73.5005(a) of the Commission's rules<sup>28</sup> requires that post-auction long-form applications include the exhibits mandated by: Section 1.2107(d) (providing a detailed explanation of the terms, conditions, and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement the applicant had entered into relating to the competitive bidding process);<sup>29</sup> Section 1.2110(j) (requiring an applicant claiming designated entity status to describe how it satisfies the eligibility requirements for such designated entity status, and to list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements, and any other agreements, including oral agreements, that establish that the designated entity will have both *de facto* and *de jure* control of the entity);<sup>30</sup> and Section 1.2112(a) (requiring that each long-form application fully disclose ownership information and the real party or parties in interest in the applicant or application).<sup>31</sup>

### H. Maintaining Accuracy of Information

After the auction closes, applicants are required to make all changes by filing an FCC Form 301.<sup>32</sup> With the release of this Public Notice, applicants are no longer required to maintain the accuracy and completeness of information furnished on their short-form applications and exhibits.

### I. Application Processing and Construction Permit Grant

Pursuant to 47 C.F.R. §§ 1.2108(b) and 73.5006,<sup>33</sup> interested parties will have **ten (10) days** to file petitions to deny after the Commission releases a public notice announcing that the FCC Form 301 has been accepted for filing.<sup>34</sup> The Media Bureau will use public notices generated by their Consolidated Data Base System (CDBS) to start the ten-day period for filing petitions to deny of these applications. The public notice entitled "Broadcast Applications" will list such applications as "Accepted for Filing." An applicant may file an opposition to any petition to deny within **five (5) days** of the filing deadline for petitions to deny.<sup>35</sup> Replies must be filed within **five (5) days** of the filing deadline for oppositions.<sup>36</sup>

Frivolous Pleadings. The Commission reminds parties to our proceedings and their attorneys that the Commission intends to use its authority fully to deter the filing of frivolous pleadings.<sup>37</sup>

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<sup>28</sup> 47 C.F.R. § 73.5005(a). *See also* Instructions for Form 301, Application for Construction Permit for Commercial Broadcast Station, Instructions for Section II: Legal Information, paragraph G: Item 10: Auction Authorization for auction-related exhibit filing requirements.

<sup>29</sup> 47 C.F.R. § 1.2107(d).

<sup>30</sup> 47 C.F.R. § 1.2110(j).

<sup>31</sup> 47 C.F.R. § 1.2112(a).

<sup>32</sup> 47 C.F.R. § 1.65.

<sup>33</sup> 47 C.F.R. § 1.2108(b), 73.5006(b).

<sup>34</sup> 47 C.F.R. § 73.5006(b).

<sup>35</sup> 47 C.F.R. § 73.5006(c).

<sup>36</sup> *Id.*

<sup>37</sup> *See* Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996).

If the Commission determines that an applicant is otherwise qualified, there is no substantial and material issue of fact concerning that determination, and that no additional payments are due, the Commission will grant the construction permit.

#### **J. Anti-collusion Rules**

To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants from communicating with each other about bids, bidding strategies, or settlements, unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii).<sup>38</sup> As explained more fully in the *Auction No. 68 Qualified Bidders Public Notice*, this prohibition began at the short-form application filing deadline and ends at the down payment deadline, which is 6:00 p.m. ET on February 8, 2007.<sup>39</sup> The prohibition applies to all applicants in Auction No. 68 regardless of whether an applicant became a qualified bidder or actually participated in the bidding, and the prohibition continues for all applicants until the down payment deadline regardless of whether a winning bidder needs to make an additional payment by the down payment deadline.<sup>40</sup> Applicants certified their compliance with Section 1.2105(c) when their FCC Form 175 short-form applications were signed.

#### **K. Return of SecurID® Tokens**

Bidders are encouraged to return for recycling their SecurID® tokens to the FCC by February 8, 2007. The Commission will send bidders a copy of this public notice and a pre-addressed, stamped envelope. All bidders should use the envelope to return the tokens now that the auction is closed. Please note that each SecurID® token is tailored to a specific auction. Therefore, the tokens issued for this auction will not work for future auctions.

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<sup>38</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). *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); *id.*, *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, 15297-98 ¶¶ 7-8 (2000).

<sup>39</sup> *See* Auction of FM Broadcast Construction Permits, 32 Bidders Qualified to Participate in Auction No. 68, *Public Notice*, DA 06-2552 (WTB/MB Dec. 22, 2006).

<sup>40</sup> *Id.*

**For further information, contact:**

News Media:

Chelsea Fallon at (202) 418-7991  
(Wireless Telecommunications Bureau)

Clyde Ensslin at (202) 418-0506  
(Media Bureau)

Technical Support Hotline:

Technical Support Personnel at  
(877) 480-3201, option nine; (202) 414-1250;  
or (202) 414-1255 (text telephony (TTY))

Office of the Managing Director  
Auctions Accounting Group  
(Payment, FCC Form 159 and refund  
questions)

Gail Glasser at (202) 418-0578

Media Bureau,  
Audio Division  
(FCC Form 301 questions)

Lisa Scanlan, Assistant Chief, at (202) 418-2700  
Thomas Nessinger, Attorney Advisor, at (202) 418-2700

Wireless Telecommunications Bureau,  
Auctions and Spectrum Access Division  
(Auction-related questions)

Lisa Stover, Project Manager, at (717) 338-2868  
Lynne Milne, Attorney at (202) 418-0660

To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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