



PUBLIC NOTICE

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DA 04-3043
September 22, 2004

SUPPLEMENTAL NOTICE CONCERNING STATUS OF FCC FORM 175 APPLICATIONS TO PARTICIPATE IN AUCTION NO. 37 AUCTION OF FM BROADCAST CONSTRUCTION PERMITS

Report No. AUC-04-37-N (Auction No. 37)

On September 13, 2004, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”) (collectively the “Bureaus”) released a *Public Notice* announcing the status of the short-form (FCC Form 175) applications to participate in Auction No. 37.¹ In the *Auction 37 Status Public Notice*, the Bureau indicated that 25 short-form applications had been rejected because the applicants had checked the box labeled “noncommercial educational” in response to the “Applicant Status” question on the face of the FCC Form 175.² Accordingly, pursuant to the Commission’s stated broadcast auction policies, those applications were not eligible for further processing and were deemed “rejected.”³

On September 16, 2004, eleven Auction No. 37 applicants whose applications had been listed in the *Auction 37 Status Public Notice* as “rejected” filed a Joint Petition for Reconsideration or Waiver of the Rules for Reinstatement of Rejected Applications Relating to FM Auction No. 37 (“Joint Petition”).⁴

¹ “Auction of FM Broadcast Construction Permits; Status of FCC Form 175 Applications to Participate in Auction No. 37,” *Public Notice*, DA 04-2948 (WTB/MB Sept. 13, 2004) (“*Auction 37 Status Public Notice*”). The *Auction 37 Status Public Notice* was corrected in an Erratum released September 17, 2004. The Erratum did not change information relating to the applications addressed in this Public Notice.

² *Id.*

³ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Second Report and Order*, 18 FCC Rcd 6691, 6699-6700 ¶¶ 22-24 (2003) (“*NCE Second Report and Order*”) (establishing policy that a change of noncommercial educational applicant status is a major change to the short-form application, which is impermissible). See also “Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,” *Public Notice*, 19 FCC Rcd 10570, 10590 (MB/WTB 2004) (“*Auction No. 37 Procedures Public Notice*”).

⁴ The Joint Petition was filed by American Family Association, Cathedral of the Cross, Christian Ministries of the Valley, Community Radio, Inc., Educational Media Foundation, Family Stations, Inc., Illinois State University, Marfa Radio, Inc., Minn-Iowa Christian Broadcasting, Inc., Relevant Media, Inc., and World-Wide Missions, Inc. (collectively “Petitioners”).

In a letter decision dated September 22, 2004, the Bureaus waived Section 1.2105(b)(2) of the Commission's rules,⁵ to the limited extent of allowing Petitioners and other similarly situated Auction No. 37 applicants until 6:00 p.m. Eastern Time on September 24, 2004, to amend their applications to de-select "Noncommercial Educational" applicant status, thus enabling them to participate in Auction No. 37.⁶ The order also stated that the Bureaus would release a Public Notice providing such applicants with instructions on how to provide written notice of intent to change their applicant status. Those instructions are provided below.

Amendment of FCC Form 175 Applications: All of the applicants listed in the tables below will have the opportunity to change their selections under "Applicant Status" on their FCC Form 175 applications.

The following applicants will have the opportunity to change their selection in the "Applicant Status" box on their FCC Form 175 applications and have no other noted deficiencies in their short-form applications:

FCC Account #	Applicant Name
0371441329	Community Radio, Inc.
0371455314	Family Stations, Inc.
0371558257	World-Wide Missions, Inc.

The applicants listed in the following table will have the opportunity to change their selection in the "Applicant Status" box, and must correct additional deficiencies before their FCC Form 175 applications can be accepted for filing. These applicants will receive correspondence indicating what information is required to make the applications acceptable for filing:

FCC Account #	Applicant Name	Error Description
0370930303	American Family Association	Invalid Mail Address
0371727056	American Handicapped Defense Union, Inc.	Invalid Mail Address Invalid Attachments
0371234579	Associated Students	Invalid Attachments
0371650037	Capital Public Radio, Inc.	Invalid Attachments
0371702416	Cathedral of the Cross	Invalid Attachments
0371839547	Central Illinois Radio Fellowship, Inc.	Invalid Mail Address Invalid Attachments
0371725297	Christian Ministries of the Valley	Invalid Mail Address
0371711075	Community Housing Coalition, Inc.	Invalid Mail Address Invalid Attachments
0371614436	Divine Word Communications	Invalid Attachments
0371245461	Educational Media Foundation	Invalid Attachments

⁵ 47 C.F.R. § 1.2105(b)(2).

⁶ See Letter to American Family Association, et al., DA 04-3037 (WTB/MB Sept. 22, 2004).

FCC Account #	Applicant Name	Error Description
0370921249	Faith Broadcasting, Inc.	Invalid Mail Address Invalid Attachments
0371228232	Great Plains Christian Radio, Inc.	Invalid Mail Address
0371834011	Houston Christian Broadcasters, Inc.	Invalid Attachments
0372142091	Illinois State University	Invalid Attachments
0371718184	Jazz Upfront Communications, Inc.	Invalid Mail Address Invalid Attachments
0371739199	Marfa Radio, Inc.	Invalid Mail Address
0371204327	Minn-Iowa Christian Broadcasting, Inc.	Invalid Mail Address Invalid Attachments
0371826196	Native American Christian Voice, Inc.	Invalid Attachments
0371341134	Relevant Media, Inc.	Invalid Mail Address
0370913128	Revival Christian Ministries, Inc.	Invalid Mail Address Invalid Attachments
0371635448	The Sister Sherry Lynn Foundation	Invalid Attachments
0371537415	Yukon Wireless, Inc.	Invalid Mail Address Invalid Attachments

The listed applicants may become qualified bidders only if they: (1) make the required upfront payments by 6:00 p.m. ET on Friday, September 24, 2004; and (2) resubmit their applications by 6:00 p.m. ET on Friday, September 24, 2004, to correct the deficiencies indicated, including de-selecting “Noncommercial Educational” under “Applicant Status,” as appropriate. Applicants also must maintain the accuracy of their FCC Form 175 applications as required by the Commission’s rules.⁷ As with all amendments, all information submitted is subject to the applicant’s certifications made under penalty of perjury in its FCC Form 175.⁸

To amend its FCC Form 175 application, the applicant’s authorized representative or contact person must send an electronic mail to auction37@fcc.gov no later than 6:00 p.m. ET on September 24, 2004, with the following information:

- A subject line indicating **Auction No. 37 Form 175 amendment(s)**;
- In the text of the message, the applicant must:
 - 1) List the applicant’s name and FRN; and

⁷ See 47 C.F.R. §§ 1.65 (substantial and significant changes in information furnished to the Commission); 1.2105(c)(6) (any applicant that makes or receives a prohibited communication shall report such communication in writing to the Commission no later than five business days after the communication occurs).

⁸ See 47 C.F.R. §§ 1.65, 1.2105.

2) Set forth the amendments to be made to the applicant's Auction No. 37 FCC Form 175 application. The specific amendments must be set forth in separate paragraphs, clearly indicating the portion of Form 175 (e.g., Profile Page), or exhibit that is being amended. Applicants amending an exhibit must attach a file to replace an entire exhibit. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.⁹

For example, the following message would correctly request three separate amendments to the Form 175 application of the bidder with the specified FRN, including a change of applicant status:

Subject Line: Auction No. 37 Form 175 Amendments

Name: Educational Communications, Inc.

FRN: 0123456789

1. Amendment to Applicant Status: De-select "Noncommercial Educational"
2. Amendment to Profile Page: Change Applicant address from "P.O. Box 123, Springfield, USA 12345" to "742 Evergreen Terrace, Springfield, USA 12345-0001."
3. Amended Exhibit D – Prior Defaults: The attached file (exhibit_D.doc) replaces the previously-submitted Exhibit D.

To be effective, amendments must comply with the above procedures and be received no later than 6:00 p.m. ET September 24, 2004. Applicants that intend to make use of the above procedures are urged to do so as soon as possible to avoid last-minute errors. **Only those applicants listed in this Public Notice will be allowed to amend their FCC Form 175 applications using this e-mail procedure.**¹⁰ UNTIMELY AMENDMENTS WILL NOT BE ACCEPTED.

Upfront Payments: Applicants listed in this Public Notice must still make timely upfront payments in order to become qualified bidders for Auction No. 37. Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 37 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, **no later than 6:00 p.m. ET on Friday, September 24, 2004. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline.**¹¹ Payments must be made by wire transfer in accordance with the instructions provided in the *Auction No. 37 Procedures Public Notice*.¹² No other payment method is acceptable for this auction. Applicants are reminded to use their FCC Registration Number ("FRN"), not their FCC Account Numbers, on the FCC Form 159. Applicants must fax a completed FCC Form 159 (revised February 2003) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day).

⁹ See *Auction No. 37 Procedures Public Notice*, 19 FCC Rcd at C-2.

¹⁰ Other applicants seeking to correct deficiencies in their short-form applications should follow the procedures set forth in the *Auction 37 Status Public Notice*.

¹¹ See Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (2003).

¹² See *Auction No. 37 Procedures Public Notice*, 19 FCC Rcd at 10590-93.

Applicants listed in this Public Notice must submit timely and sufficient upfront payments before the Commission will review their submitted applications. If no upfront payment is made, the application remains incomplete or otherwise deficient following its resubmission, or the applicant fails to deselect “noncommercial educational” as its applicant status, the application will be dismissed. If the applicant has provided its FRN and wire transfer instructions from the payor of record, any upfront payment made prior to dismissal will be refunded in a timely manner upon request.

Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including transfer times and bank closing schedules) with their financial institution before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments including additional requirements for “former defaulters” can be found in the *Auction No. 37 Procedures Public Notice* under Section II.E and Section III.D.

Note: Applicants are reminded to submit the same FRN with all future payments.

Other Procedures: Applicants should review the *Auction 37 Status Public Notice* for detailed instructions regarding other Auction No. 37 procedures.

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