

ATTACHMENT A
PRE-AUCTION PROCEDURES

General Filing Requirements

Applicants for AM new and major modifications must file an FCC Form 175 short-form application and the engineering data contained in the FCC Form 301. Such engineering information is required to make mutual exclusivity determinations. MB will not make any determination as to the acceptability or grantability of an applicant's technical proposal. A comprehensive review of applicants' technical proposals will be undertaken by the staff following the submission of long-form applications by winning bidders post-auction, by applicants identified as non-mutually exclusive, and by applicants resolving application mutual exclusivity during the established settlement period.

A. FCC Form 301 Filing Procedures – Due January 30, 2004 6:00 p.m. ET

Applicants for AM new and major modifications must electronically file an FCC Form 301 between 12:01 a.m. ET January 26, 2004 and 6:00 p.m. ET January 30, 2004. Only Section I and the Tech Box from Section III-A of the electronically filed FCC Form 301 must be completed at this time. No application filing fee is required. **Note: A separate Form 301 must be submitted for each AM new and major modification proposed. Regardless of the number of Form 301s filed, applicants must only submit one Form 175.** Applicants must specify the CDBS-assigned file number(s) of all window-filed Form 301 application(s) in the Form 175, at Exhibit F ("Miscellaneous Information"). FCC Form 175 submissions for which no FCC Form 301 is submitted will not be considered. Any Form 301 AM new or major change applications filed prior to January 26, 2004, will be dismissed without further consideration. Late applications will not be accepted.

B. Short-Form Application (FCC Form 175) Filing Procedures -- Due January 30, 2004 6:00 p.m. ET

All applicants must electronically submit an FCC Form 175 application no later than 6:00 p.m. ET on January 30, 2004. There is no application fee required when electronically filing an FCC Form 175. FCC Form 301 submissions for which no FCC Form 175 is submitted will be dismissed without further consideration. Late applications will not be accepted.

(1) Electronic Filing.

All Form 175 applications must be filed electronically.¹ Applicants may file Form 175 applications electronically beginning 9:00 a.m. ET January 26, 2004. The Form 175 filing system generally will be open on a 24-hour basis. The Form 175 filing window will remain open until 6:00 p.m. ET on January 30, 2004. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline. Information regarding the electronic filing of the FCC Form 175 application is included as Attachment C to this Public Notice. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)). The hours of service are 8 a.m. - 6 p.m. ET, Monday - Friday.

¹ See *Third Report and Order*, 13 FCC Rcd 374, 410-11(1997); 47 C.F.R. § 1.2105(a).

(2) Completion of the FCC Form 175.

Applicants should carefully review 47 C.F.R. Sections 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment B of this Public Notice. Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Form 175. An applicant may make only minor non-technical corrections to its FCC Form 175 application after the January 30, 2004 filing deadline.² For this reason it is critical that all applicants carefully review their FCC Form 175 submissions prior to the close of the filing window.

(3) Minor Modifications to FCC Form 175.

After the short-form filing deadline (January 30, 2004), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits).³ Permissible minor changes include, for example, the deletion and addition of authorized bidders (to a maximum of three). Applicants should make these minor modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auction84fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 84. WTB requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Ken Burnley of the Auctions and Industry Analysis Division at (202) 418-0660.

(4) Maintaining Current Information in FCC Form 175.

Applicants have an obligation under 47 C.F.R. §1.65, 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 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

(5) Electronic Review of FCC Form 175.

The FCC Form 175 review software may be used to review and print an applicant’s FCC Form 175 application. Prior to the filing deadline, applicants may only review their own completed FCC Form 175. Applicants may review their 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. Because the FCC Form 175s are made public, it is important that an applicant does not include its Taxpayer Identification Number (TIN) on any Exhibits to its FCC Form 175 application. There are no fees for accessing the Form 175 filing or review system.

² See 47 C.F.R. § 1.2105.

³ See *id.* § 1.2105.

C. Prohibition of Collusion

To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits competing applicants from communicating with each other during the auction 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).⁴ 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.⁵ To the extent provided in Section 73.5002(d)(1)&(2), 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 competing applications will be specified in a later public notice.**⁶ For purposes of this prohibition, Section 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests 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, and all officers and directors of that entity.⁷

Applicants competing for construction permits in any of the same markets are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule 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, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.⁸ However, WTB and MB 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.⁹

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 any of the same markets. Therefore, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. 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

⁴ 47 C.F.R. § 1.2105(c)(1); 47 C.F.R. § 1.2105(a)(2)(viii). *See also Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd 15293, 15297-98 (2000).

⁵ 47 C.F.R. § 1.2105(c)(1).

⁶ 47 C.F.R. § 73.5002(d).

⁷ 47 C.F.R. § 1.2105(c)(7)(i).

⁸ *See In re 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).

⁹ *See id.*, at 11978.

their Form 175.¹⁰ 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), 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 any of the same markets.¹¹ By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Sections 1.2105(c) and 73.5002.¹²

Section 1.65 of the Commission's rules requires an applicant 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.¹³ Thus, Section 1.65 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) 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 the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.¹⁴

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.¹⁵ Any applicant found to have violated the anti-collusion rule 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.¹⁶ 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.¹⁷

¹⁰ 47 C.F.R. § 1.2105(c).

¹¹ See *Public Notice*, "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," 11 FCC Rcd 9645 (1995).

¹² 47 C.F.R. §§ 1.2105(c), 73.5002

¹³ 47 C.F.R. § 1.65.

¹⁴ 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

¹⁵ 47 C.F.R. §§ 1.2107(d), 73.5005(a).

¹⁶ See 47 C.F.R. § 1.2109(d).

¹⁷ *Id.*

D. Application Processing

After the application filing deadline, MB will process all timely and complete filings, to determine which are mutually exclusive. Non-mutually exclusive applicants will be identified by subsequent public notice and will be directed to then submit the complete FCC Form 301 within 30 days. MB also will issue a public notice identifying applications received during the window that are found to be mutually exclusive.¹⁸ This public notice will also specify a settlement period for resolving application mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of universal settlement agreements.¹⁹ Technical amendments submitted by applicants to resolve their mutual exclusivities must be minor, as defined by the applicable rules of the AM service, and must not create any new mutual exclusivity or application conflict.

Commercial applications that remain mutually exclusive after the settlement period closes will proceed to auction. MB and WTB will then issue a public notice identifying the auction date and seek comment on procedures for further processing the remaining mutually exclusive Form 175 applications, including identifying those Form 175 applications with minor defects that may be corrected.

¹⁸ *See id.* § 73.3571(h)(2). All mutually exclusive applications will be considered under the relevant procedures for conflict resolution.

¹⁹ *See id.* § 73.5002 (c)&(d). If a mutually exclusive group which is eligible to submit engineering solutions or settlement does not do so by the settlement deadline date, and the applications in that group propose to serve different communities of license, each applicant within the group must then submit an amendment addressing Section 307(b) criteria. *See, e.g., Public Notice, "AM Auction No. 32 Mutually Exclusive Applicants Subject to Auction,"* 15 FCC Rcd 20449, 20451 (MMB 2000).