

that a long-form application for an AM, FM or television construction permit has been accepted for filing, petitions to deny that application may be filed. Within fifteen (15) days following the issuance of a public notice announcing that a long-form application for a low-power television, television translator or FM translator construction permit has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. In the AM, FM and television broadcast services, the time for filing such oppositions shall be five (5) days from the filing date for petitions to deny, and the time for filing replies shall be five (5) days from the filing date for oppositions. In the low-power television, television translator and FM translator broadcast services, the time for filing such oppositions shall be fifteen (15) days from the filing date for petitions to deny, and the time for filing replies shall be ten (10) days from the filing date for oppositions.

(d) Broadcast construction permits will be granted by the Commission only if the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, and after full and timely payment of winning bids and any applicable late fees. See 47 CFR 73.5003. Construction of broadcast stations shall not commence until the grant of such permit or license to the winning bidder and only after full and timely payment of winning bids and any applicable late fees.

[69 FR 72044, Dec. 10, 2004, as amended at 71 FR 6228, Feb. 7, 2006]

§ 73.5007 Designated entity provisions.

(a) *New entrant bidding credit.* A winning bidder that qualifies as a “new entrant” may use a bidding credit to lower the cost of its winning bid on any broadcast construction permit. Any winning bidder claiming new entrant

status must have de facto, as well as de jure, control of the entity utilizing the bidding credit. A thirty-five (35) percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have no attributable interest in any other media of mass communications, as defined in § 73.5008. A twenty-five (25) percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have an attributable interest in no more than three mass media facilities. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast or secondary broadcast station, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, have attributable interests in more than three mass media facilities. Attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder’s other mass media interests in determining eligibility for a bidding credit. Eligibility for the new entrant bidding credit must be specified in an applicant’s FCC Form 175 application, and the new entrant bidding credit specified in an applicant’s FCC Form 175 application establishes that applicant’s maximum bidding credit eligibility for that auction. Any post-FCC Form 175 filing change in the applicant’s circumstances underlying its new entrant bidding credit eligibility claim, or that of any attributable interest-holder in the applicant, must be reported to the Commission immediately, and no later than five business days after the change occurs. Any such post-FCC Form 175 filing change may cause a reduction or elimination of the new entrant bidding credit claimed in the applicant’s FCC Form 175 application, if the change would cause the applicant not to qualify for the originally claimed new entrant bidding credit under the eligibility provisions of § 73.5007, and the change occurred prior to grant of the construction permit to the applicant. Final determinations regarding new entrant status will be

made at the time of long form construction permit application grant. Applicants whose eligibility is lost or reduced subsequent to the FCC Form 175 filing must, before a construction permit will be issued, make such payments as are necessary to account for the difference between claimed and actual bidding credit eligibility.

(b) The new entrant bidding credit is not available to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have an attributable interest in any existing media of mass communications in the same area as the proposed broadcast or secondary broadcast facility.

(1) Any existing media of mass communications will be considered in the “same area” as a proposed broadcast or secondary broadcast facility if the relevant defined service areas of the existing mass media facilities partially overlap, or are partially overlapped by, the proposed broadcast or secondary broadcast facility’s relevant contour.

(2) For purposes of determining whether any existing media of mass communications is in the “same area” as a proposed broadcast or secondary broadcast facility, the relevant defined service areas of the existing mass media facilities shall be as follows:

(i) AM broadcast station—principal community contour (*see* § 73.24(i));

(ii) FM Broadcast station—principal community contour (*see* § 73.315(a));

(iii) Television broadcast station—television Grade B or equivalent contour (*see* § 73.683(a) for analog TV and § 73.622(e) for DTV);

(iv) Cable television system—the franchised community of a cable system; and

(v) Daily newspaper—community of publication.

(3) For purposes of determining whether a proposed broadcast or secondary broadcast facility is in the “same area” as an existing mass media facility, the relevant contours of the proposed broadcast or secondary broadcast facility shall be as follows:

(i) AM broadcast station—principal community contour (*see* § 73.24(i));

(ii) FM broadcast station—principal community contour (*see* § 73.315(a));

(iii) FM translator station—predicted, protected contour (*see* § 74.1204(a) of this chapter);

(iv) Television broadcast station—television Grade B or equivalent contour (*see* § 73.683(a) for analog TV and § 73.622(e) for DTV).

(v) Low power television or television translator station—predicted, protected contour (*see* § 74.707(a) of this chapter).

(c) *Unjust enrichment.* If a licensee or permittee that utilizes a new entrant bidding credit under this subsection seeks to assign or transfer control of its license or construction permit to an entity not meeting the eligibility criteria for the bidding credit, the licensee or permittee must reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten-year U.S. Treasury obligations applicable on the date the construction permit was originally granted, as a condition of Commission approval of the assignment or transfer. If a licensee or permittee that utilizes a new entrant bidding credit seeks to assign or transfer control of a license or construction permit to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten-year U.S. Treasury obligations applicable on the date the construction permit was originally granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. The amount of the reimbursement payments will be reduced over time. An assignment or transfer in the first two years after issuance of the construction permit to the winning bidder will result in a forfeiture of one hundred (100) percent of the value of the bidding credit; during year three, of seventy-five (75) percent of the value of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no payment. If a licensee or permittee who utilized a new entrant bidding credit in obtaining a broadcast license or construction permit acquires within this five-year reimbursement period an additional broadcast facility

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or facilities, such that the licensee or permittee would not have been eligible for the new entrant credit, the licensee or permittee will generally not be required to reimburse the U.S. Government for the amount of the bidding credit.

NOTE 1 TO § 73.5007: For purposes of paragraph (b)(3)(ii) of this section, the contour of the proposed new FM broadcast station is based on the maximum class facilities at the FM allotment site, which is defined as the perfectly circular standard 70 dBu contour distance for the class of station.

[64 FR 24526, May 7, 1999, as amended at 68 FR 46358, Aug. 5, 2003; 69 FR 72045, Dec. 10, 2004; 75 FR 9807, Mar. 4, 2010]

§ 73.5008 Definitions applicable for designated entity provisions.

(a) *Scope.* The definitions in this section apply to 47 CFR 73.5007, unless otherwise specified in that section.

(b) A *medium of mass communications* means a daily newspaper; a cable television system; or a license or construction permit for a television broadcast station, an AM or FM broadcast station, or a direct broadcast satellite transponder.

(c)(1) An attributable interest in a winning bidder or in a medium of mass communications shall be determined in accordance with § 73.3555 and Note 2 to § 73.3555. In addition, any interest held by an individual or entity with an equity and/or debt interest(s) in a winning bidder shall be attributed to that winning bidder for purposes of determining its eligibility for the new entrant bidding credit, if the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus all debt) of the winning bidder.

(2) Notwithstanding paragraph (c)(1) of this section, where the winning bidder is an eligible entity, the combined equity and debt of the interest holder in the winning bidder may exceed the 33 percent threshold therein without triggering attribution, provided that:

(i) The combined equity and debt of the interest holder in the winning bidder is less than 50 percent, or

(ii) The total debt of the interest holder in the winning bidder does not exceed 80 percent of the asset value of the winning bidder and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the winning bidder or any related entity. For purposes of paragraph (c)(2) of this section, an “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration’s size standards for its industry grouping, as set forth in 13 CFR 121.201, at the time the transaction is approved by the FCC, and holds:

(A) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

(B) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

(C) More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

[63 FR 48629, Sept. 11, 1998, as amended at 64 FR 24527, May 7, 1999; 64 FR 44858, Aug. 18, 1999; 69 FR 72045, Dec. 10, 2004; 73 FR 28370, May 16, 2008; 75 FR 27200, May 14, 2010]

§ 73.5009 Assignment or transfer of control.

(a) The unjust enrichment provisions found at § 1.2111(b) through (e) of this chapter shall not apply to applicants seeking approval of a transfer of control or assignment of a broadcast construction permit or license within three years of receiving such permit or license by means of competitive bidding.

(b) The ownership disclosure requirements found at § 1.2112(a) of this chapter shall not apply to an applicant seeking consent to assign or transfer control of a broadcast construction permit or license awarded by competitive bidding.

[67 FR 45375, July 9, 2002, as amended at 68 FR 43000, July 21, 2003]