

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 or ITFS license 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 and in ITFS, 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) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, a public notice will be issued announcing that the broadcast construction permit(s) or ITFS license(s) is ready to be granted, upon full payment of the balance of the winning bid(s). See 47 CFR 73.5003. Construction of broadcast stations or ITFS facilities shall not commence until the grant of such permit or license to the winning bidder.

[63 FR 48629, Sept. 11, 1998, as amended at 64 FR 24526, May 7, 1999; 67 FR 45375, July 9, 2002; 68 FR 26229, May 15, 2003]

**§ 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.

(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;

(v) Daily newspaper—community of publication; and

(vi) Multipoint Distribution Service station—protected service area (see §§ 21.902(d) or 21.933 of this chapter).

(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 bid-

ding 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 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.

[64 FR 24526, May 7, 1999, as amended at 68 FR 46358, Aug. 5, 2003]

#### § 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, a direct broadcast satellite transponder, or a Multipoint Distribution Service station.

(c) 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. In addition, the attributable mass media interests, if any, 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