

31

Instructions

Item 1. Applicant Name: Enter the legal name of the person or entity applying to participate in an auction. If other than an individual, insert the exact name of the entity as it appears on the legal document(s) establishing the entity such as the Articles of Incorporation.

[NOTE: Applicants who have entered into an arrangement(s) of any kind relating to the license(s) specified in this application must provide additional information. See certification instructions below.]

Item 2. Applicant Mailing Address: Enter the street address to which the entity wants future correspondence relating to this application to be mailed. Indicate street numbers or rural route numbers as appropriate.

Item 3. City: Enter the city name for the applicant mailing address.

Item 4. State: Enter the two-letter state abbreviation for the applicant address.

Item 5. ZIP Code: Enter the ZIP Code for the applicant address.

Item 6. Auction Number: Enter the appropriate auction number. This number will be supplied by the Commission in the Public Notice announcing the auction.

Item 7. FCC Account No.: Enter your personal identification number. This number must consist of ten digits. You have two options to create this FCC Account Number. Option 1-you must use your taxpayer identification number (TIN) with a prefix of "0", e.g., 0123456789, if you have a TIN. Option 2-if you do not have a TIN, use your ten-digit telephone number (e.g., 5552345678). You should use this same number when submitting additional information/material regarding this application, including any required fees submitted to the Commission on FCC 159, FCC Remittance Advice, (i.e., use the same number for this form and the FCC Account Number on FCC 159).

Item 8. Applicant Classification: Place an [X] in the appropriate box preceding the type of entity to indicate the type of legal entity applying. If an [X] is placed in the "Other" box indicate the type of entity applying in the space provided (e.g., governmental entity, association, etc.). Limited liability companies should check the "Partnership" box.

Item 9. Financial Eligibility (if applicable): Applicants that must meet financial eligibility requirements should complete this item (e.g., to participate in an entrepreneurs' block auction or to be eligible as a small business). Place an [X] in the boxes provided if the applicant's gross revenues or total assets (if applicable) do not exceed the dollar amount specified in the Commission's Rules governing the auctionable service. If the applicant places an [X] in the gross revenues box, it will be certifying its eligibility to bid on these licenses and that its gross revenues do not exceed the required maximum. If the applicant places an [X] in the total assets box, it will be certifying that its total assets do not exceed the required maximum.

Item 10. Applicant Status: Place an [X] in the appropriate box or boxes preceding the appropriate designated entity type. This information will be used for purposes of determining the applicant's eligibility for any special provisions available for designated entities. See Part 1 and the specific Commission Rules governing the auctionable service for definitions of the different types of designated entities. Designated entities who qualify for bidding credits and/or installment payment plans should specify which bidding credit percentage and installment payment plan (e.g., payment plan A or B) applies. See the Public Notice or Bidder Information Package of the auctionable service for the definitions of the payment plan types. Information concerning designated entities that are ineligible for bidding credits and/or installment payment plans will be collected for statistical purposes only.

Item 11. Markets/Frequency Blocks: Enter the code for the market(s) on

which you want to bid in the column under Market No. The codes will be provided by the Commission in a Public Notice. Use a separate line (a-e) for each different market. If you want to be eligible to bid on licenses in more than five markets, you must use Supplemental Form, FCC 175-S. Place an [X] in the box below the table to indicate there are supplementary forms attached, and specify the number of supplemental forms. If, however, you want to be eligible to bid on licenses in all markets, you should place an [X] in the box marked "ALL", and you need not submit supplementary forms. After each market, list the letter(s) or number(s) for the frequency block(s) or channel(s) on which you want to bid. These codes will be provided by the Commission in a Public Notice. For example, if you wanted to bid on two frequency blocks in market (a) and one block in market (b), to be eligible you would enter the codes for the two desired frequency block(s) in market (a) in columns 1 and 2 on line (a) and leave the remaining columns on that line blank. On line (b) you would enter in column 1 the code for the frequency block you want in market (b) and leave the remaining columns on the line blank. If you want to be eligible to bid on all frequency blocks in all the markets you specified, you should place an [X] in the box marked "ALL". Exhibits: If exhibits are attached to the application, check the box provided and indicate the number of exhibits.

Item 12. Certification: Type or print the name(s) of the person(s) you wish to designate as an authorized representative(s). Only authorized representatives will be allowed to make or withdraw bids at an auction. You may list a maximum of three (3) authorized representatives. Enter the typed/printed name of the individual authorized to sign the application, his/her title, date signed, authorized individual's signature, the name of a person familiar with the application (contact person) and the phone number, fax number (including area code), and e-mail address of the contact person. All applications must bear an original signature of a person authorized to sign on behalf of the applicant. List in the space provided below or in an exhibit the name, citizenship and address of all partners, if the applicant is a partnership; of a responsible officer or director, if the applicant is a corporation; of the trustee, if the applicant is a trust or, if the applicant is none of the forgoing, list the name and address of a principal or other responsible person. In addition, for applicants claiming eligibility for bidding credits and/or installment payment plans, compute the applicant's gross revenues, and its affiliates' gross revenues in accordance with the Commission's Rules governing the auctionable service. For applicants claiming eligibility for an entrepreneur's block or for designated entity status, list information on the applicant's control group (if applicable), affiliates, gross revenues and assets, if applicable. See the Commission's Rules governing the auctionable service. Also, list in the space provided below or in an exhibit all parties with whom the applicant has entered into an agreement(s), of any kind, relating to the licenses being auctioned including such agreements(s) relating to the post-auction market structure. See Part 1, Subpart Q of the Commission's Rules.

NOTE: The Commission's Public Notice announcing the auction for the licenses on which you are interested in bidding contains information essential to completing this form correctly. You should also consult the specific rules governing the service in which you are applying. Forms which are completed incorrectly may be dismissed without an opportunity for resubmission.

If additional space is needed for listing additional information required by the Certification, attach a separate sheet(s).

The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information to determine whether grant of this application is in the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on this form is not provided, processing may be delayed or the application may be returned without action pursuant to the Commission's rules. Your response is required to obtain the requested authority.

Public reporting burden for this information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data needed, gathering and maintaining the data needed, and completing and reviewing the collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Paperwork Reduction Project (3060-0600), Records Management Branch, Washington, D.C. 20554. **DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS!**

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1975, 5 U.S.C. 522a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

APPENDIX B
Initial Regulatory Flexibility Analysis

A. Reason for Action

This rulemaking proceeding is being initiated to obtain comment on the proposed modifications to the licensing and service rules for the Direct Broadcast Satellite (DBS) service. The *Notice of Proposed Rulemaking* also seeks comment on the proposed rules for competitive bidding in the DBS service based on Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), which authorizes the Commission to use auctions to select among mutually exclusive applications for authorizations under certain circumstances.

B. Objectives

The Commission seeks to update the "interim" rules established for the DBS service more than a decade ago, in order to ensure more efficient and rapid use of DBS resources, to promote effective competition and prevent anticompetitive behavior, and to reflect developments in DBS service and technology since the original rules were promulgated. The Commission also seeks to establish rules for competitive bidding, to be used to assign construction permits for available DBS channels.

C. Legal Basis

The proposed action is authorized under Sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 157, and 309(j).

D. Reporting, Recordkeeping and Other Compliance Requirements

The action proposed in this *Notice of Proposed Rulemaking* would affect those applying to participate in auctions of DBS construction permits. We propose to require that those seeking to participate in such auctions provide certain information to identify themselves and their authorized representatives. These applicants would be required to comply with proposed requirements to file a report approved for use by applicants for other auctions conducted by the Commission (FCC Form 175), but this is not estimated to be a significant economic burden for these entities.

E. Federal Rules that Overlap, Duplicate or Conflict with These Requirements

None.

F. Description, Potential Impact and Number of Small Entities Involved

Small businesses that do not have the financial ability to become DBS licensees, because of the high implementation costs associated with satellite services, could become

involved in producing programming for DBS providers, especially in niche markets not now served by traditional broadcasting or cable. Opportunities for leasing satellite time from DBS satellite licensees to provide service could also be available to small businesses as well as opportunities in equipment design and manufacturing.

G. Any significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

This Notice solicits comments on any suggested alternatives to achieve Commission objectives.

STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

DISSENTING IN PART AND CONCURRING IN PART

**RE: Revision of Rules and Policies for the Direct Broadcast
Satellite Service**

Today, the Commission issues a Notice of Proposed Rulemaking ("NPRM") to devise and implement a method for reassigning the 51 direct broadcast satellite (DBS) channels reclaimed pursuant to the decision in Advanced Communications Corporation as well future DBS channels.¹ The Commission proposes, among other things, to auction the 28 channels at the 110° orbital location as well as the 24 channels at the 148° orbital location.² As a result of my determination in the Advanced Order, I am compelled to dissent with respect to the reassignment of the 51 channels that were held by Advanced Communications Corporation (ACC) and for which ACC sought Commission approval for transfer to Tempo DBS, Inc. ("Tempo"). Further, I concur with respect to the Commission's decision to auction future DBS channels for reasons which I will set forth herein.

In the Advanced Order, I dissented to the Commission's decision as it related to ACC because I firmly believed then, as I do now, that given our ambiguous precedent with regard to due diligence criteria for DBS, ACC should have been deemed in compliance with the Commission's due diligence standards. Moreover, I would have favored the transfer of ACC's permit to Tempo in order to expeditiously introduce a new DBS competitor into the marketplace. Further, while I believe that the Commission is making an effort to expedite this proceeding in order to hold auctions in the near term, I remain skeptical about the feasibility of such a schedule that does not take into account the potential disruption resulting from litigation. Finally, having concluded that auctions are not warranted for the 51 channels, I believe it pointless to establish an auction for a single channel.

¹ Advanced Communications Corp., FCC 95-428 (adopted October 16, 1995) ("Advanced Order").

² I note that while the Commission intends to auction 28 channels at the 110° orbital location, the Commission had only assigned 27 channels to ACC. There is a single channel at the 110° orbital location that has never been assigned to any permittee.

However, I concur in the Commission's decision to establish auction rules for these 52 DBS channels as well as for future auctions of DBS spectrum. I believe that there are significant issues the Commission seeks to address through this expedited rulemaking that will take time to review, and ultimately, to resolve for future DBS auctions. First, I am concerned that the Commission not revisit issues, such as our program access rules, that should be reviewed, and if appropriate, modified in an independent proceeding. While the Commission acknowledges that it has not previously had occasion to consider the vertical foreclosure issues presented by common ownership among DBS operators, other multichannel video programming distributors, and program vendors, I would hope that we will not use this proceeding to conduct a wholesale review of our program access rules. Moreover, the contentious nature of prior proceedings dealing with our program access rules provides evidence that careful review of the rules is critical.

I am also concerned about the Commission's proposed ninety (90) day divestiture period for those permittees or licensees that acquire control of channels in excess of the Commission's proposed limit.³ If an entity exceeds this limit, it will be given ninety (90) days from the date of Commission grant of license in which to either surrender its excess channels to the Commission or file a transfer or assignment application in order to divest sufficient channels to bring it into compliance with the applicable spectrum cap. If adopted, I believe that this provision may lead to a "fire sale" scenario in which an entity would be placed in a disadvantageous negotiating position in order to sell its permits rather than surrender its permits to the Commission and be subject to significant losses, particularly if the number of relinquished channels would not result in a viable service. Moreover, I believe that the Commission must acknowledge and remain cognizant that these permittees have complied with our due diligence requirements and that there is the potential for inequities if these same permittees are faced with the choice of losing their channels or selling their channels at a loss because of a possible modification of our rules.

While the Commission anticipates that DBS spectrum would continue to be used primarily to deliver DBS service to the public, it indicates that DBS operators would be afforded maximum flexibility, within certain limits, to make optimal use of the

³ The Commission has proposed limiting the aggregation of DBS channel assignments to a total of thirty two (32) channels at any combination of orbital locations capable of full-CONUS service.

DBS spectrum. While I share beliefs about increasing spectrum efficiency, I encourage the Commission not to act without fully understanding the implications of flexible use with respect to this or any other service.

In proposing to establish a minimum opening bid, the Commission acknowledges that one party has indicated that it would, if given the opportunity through the competitive bidding process, submit an initial bid at \$175 million.⁴ The Commission seeks comment on the appropriate amount for a minimum opening bid. I trust that the Commission will not base its determination as to the appropriate valuation of a minimum opening bid solely on the recitations of one party that sought to persuade the Commission to conduct auctions for the DBS channels reclaimed from ACC.⁵ While the proposed opening bid is enticing, it is neither binding, formally a part of this record nor, in my mind, a true indicator of the potential market value for the spectrum. As a result, I trust that the Commission will not be blinded by this entity's salvo without considering fully the potential for manipulation of the Commission's decision making process in this as well as future proceedings if such a proposed opening bid is adopted.

Finally, I wish to emphasize the Commission's continued obligation under Section 309(j) to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."⁶ The Commission has recognized that the substantial costs involved in implementing satellite proposals have been a significant obstacle to new entrants in the field of satellite-based services.⁷ Despite these high costs (which undoubtedly will be apparent for future services as well), I firmly believe that it is not out of the question that a consortia of small businesses may be able to

⁴ See letter from Gerald H. Taylor, President and Chief Operating Officer of MCI to Hon. Reed E. Hundt (dated October 10, 1995).

⁵ I also note that prior to rendering a decision in the Advanced Order, one of my colleagues asked me whether this alleged opening bid would persuade me that auctioning the 27 channels was appropriate. Clearly, based on my position in the Advanced Order, my response was a resounding "no".

⁶ 47 U.S.C. §§ 309(j)(4)(D), 309(j)(3)(B), and 309(j)(4)(A).

⁷ I also believe that the Commission's proposal to auction two (2) blocks of spectrum at 110° and 148° necessarily reduces the number of DBS competitors.

participate in these auctions if the Commission adopts measures, such as bidding credits and installment payments for small businesses.⁸ I will closely scrutinize the comments with respect to designated entities to determine the methods of inclusion that are most appropriate in the DBS arena.

⁸ While I would like to see measures established for minority and women-owned businesses, I recognize that the Commission must move cautiously in this area. However, I also recognize that significant delay in undertaking the appropriate studies for satisfying a strict scrutiny standard translates into lost opportunities as new service entrants for these groups.

**SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG**

Re: Revision of Rules and Policies for the Direct Broadcast Satellite Service, IB Docket No. 95-443, PP Docket No. 93-253.

I write separately in this matter to encourage commenters to provide input on the scope of the regulatory proposals regarding competition set forth in this item. As I have stated before, I believe that minimal regulation is generally best, especially when there is competition in a market. It is my hope that our final rules for this service will reflect our overarching goal for the video services market – vibrant competition with minimal government intervention.