Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 97–234, GC Docket No. 92–52, and GEN Docket No. 90–264; FCC 99–74]

Implementation of Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document, the Federal Communications Commission resolves numerous petitions for reconsideration filed against the Commission's earlier report and order in this proceeding that implemented provisions of the Balanced Budget Act of 1997 expanding the Commission's competitive bidding authority to include the commercial broadcast services. The document generally upholds the Commission's earlier determinations, but does amend the rules and procedures previously adopted with respect to the application of the general auction anti-collusion rule to broadcast service auctions and the eligibility standards for the new entrant bidding credit.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Jerianne Timmerman, Video Services Division, Mass Media Bureau at (202)418–1600; Lisa Scanlan, Audio Services Division, Mass Media Bureau at (202)418–2700; Lee Martin, Office of General Counsel at (202)418–1720.

SUPPLEMENTARY INFORMATION:

Summary

1. In this *Memorandum Opinion and Order* adopted April 15, 1999, and released April 20, 1999, the Federal Communications Commission resolves petitions for reconsideration of the rules and procedures adopted in the *First Report and Order,* 63 FR 48615 (September 11, 1998), to implement provisions of the Balanced Budget Act of 1997 expanding the Commission's competitive bidding authority to include the commercial broadcast services and the Instructional Television Fixed Service (ITFS). The *Memorandum Opinion and Order* denies most issues presented in the petitions for reconsideration, but grants certain aspects of the petitions, most notably amending the applicability of the general anti-collusion rule to broadcast service auctions and refining the standards for applicants to qualify for the new entrant bidding credit.

Issues Pertaining to Pending Competing Applications

2. The *Memorandum Opinion and Order* upholds the Commission's determinations made in the *First Report and Order* with respect to pending competing full service commercial broadcast applications. Specifically, the *Memorandum Opinion and Order* denies reconsideration petitions: (1) challenging the Commission's decision to use auctions to decide among pending competing broadcast applications; (2) requesting the reimbursement of all expenses incurred by pending applicants who filed with the expectation that the Commission would use a comparative hearing to select among competing broadcast applications; (3) questioning the determination to defer until after the auction the resolution of basic qualifications issues raised against pending applicants; (4) challenging the determination that new Section 309(l) of the Communications Act permits the opening of a new filing window with respect to singleton analog television applications (with freeze waiver requests) filed by September 20, 1996; and (5) requesting some provision for a specific situation in which a competing applicant with interim operating authority has been allowed to operate a contested FM station for profit.

Filing and Other Procedural Issues

3. The *Memorandum Opinion and Order* upholds the Commission's determinations made in the *First Report and Order* regarding the following filing and procedural issues: (1) the utilization of a uniform window filing system for all auctionable broadcast services, including the FM translator and AM services; (2) allowing applicants the option of submitting a set of preferred site coordinates on their short-form applications (FCC Form 175) to participate in an FM auction; and (3) continuing to use for the filing of short-form applications in broadcast auctions the Wide Area Network utilized in previous Commission auctions for the filing of short-forms. In response to one petition, the *Memorandum Opinion and Order* extends from 10 to 15 days the filing period for petitions to deny against the long-form applications filed by winning bidders for construction permits in the secondary broadcast services. The *Memorandum Opinion and Order* also clarifies the applicability of Section 1.2112(a) of the general Part 1 auction rules to broadcast transfer and assignment applications, so as to reduce the repetitive submission of similar ownership information.

Competitive Bidding Issues

4. With regard to competitive bidding issues, the *Memorandum Opinion and Order* rejects the assertion that the imposition of reserve prices or minimum opening bids is not in the public interest in the broadcast context, and declines to adopt a proposal to resolve any remaining competing June 1, 1998 low power television displacement applications by means of various suggested priorities. The *Memorandum Opinion and Order* also rejects the contention that the Commission should adopt a post-auction procedure where, upon petition by a winning bidder, the Commission would consider evidence that the winning bidder was the sole qualified applicant for a broadcast authorization, and, in cases in which such a demonstration was made that the unsuccessful competing bidders for that authorization were unqualified, the winning bidder should be relieved of its obligation to remit the payment of its winning bid.

5. A number of petitioners called for an exception to the general auction anti-collusion rule to allow, after the filing of short-form applications in broadcast auctions, an opportunity for negotiated settlements and/or for technical and engineering solutions to remove mutual exclusivities before proceeding to auction. Although the *Memorandum Opinion and Order* rejects the contention that the Commission is statutorily required to allow such a settlement opportunity prior to broadcast service auctions, it concludes that allowing the resolution of mutual exclusivities by engineering solutions or other means following the submission of short-form applications would serve the public interest in the secondary broadcast services, and in ITFS as well.

6. Several petitioners objected to various aspects of the new entrant bidding credit, which provides a tiered credit for broadcast auction winning bidders with no, or very few, other media interests. In response to these petitions, and to promote the clear and consistent application of the eligibility standards for the bidding credit, the *Memorandum Opinion and Order:* (1) amends the eligibility standards for the bidding credit to be consistent with the

Commission's general broadcast attribution standards; (2) amends the eligibility standards for the credit so that a winning bidder's attributable interests in existing secondary broadcast stations are not counted among the bidder's other mass media interests in determining eligibility; and (3) refines the standards for determining whether a winning bidder's proposed broadcast station and the bidder's existing station(s) serve the ''same area,'' thereby rendering the bidder ineligible for a bidding credit. In addition, the *Memorandum Opinion and Order* declines to increase the size of the tiered new entrant bidding credit, and clarifies that the credit applies only to broadcast service auctions (and not to ITFS auctions). Finally, the *Memorandum Opinion and Order* states that the Commission will consider in a further order in this proceeding an additional refinement to the new entrant eligibility standards; specifically, this further order will consider whether to attribute debt and/or equity above a certain level, based on the Commission's review of the record in the pending broadcast attribution proceeding.

7. The complete text of this *Memorandum Opinion and Order,* including any statements, is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

Supplemental Final Regulatory Flexibility Analysis

Summary

8. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *First Report and Order* in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) in this *Memorandum Opinion and Order* reflects revised or additional information to that contained in the FRFA. This Supplemental FRFA is thus limited to matters raised in response to the *First Report and Order* that are granted on reconsideration in the *Memorandum Opinion and Order.* This Supplemental FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.

Need For and Objectives of Action

9. The actions taken in this *Memorandum Opinion and Order* are in response to petitions for reconsideration or clarification of the rules and policies adopted in the *First Report and Order* to implement provisions of the Balanced Budget Act of 1997 expanding the Commission's competitive bidding authority to include the broadcast services and the Instructional Television Fixed Service (ITFS). The petitions are denied, with certain limited exceptions.

Significant Issues Raised by Public in Response to Final Regulatory Flexibility Analysis

10. No petitions or comments were received in response to the FRFA. Small business-related issues were, however, raised indirectly by some petitioners, who asked for reconsideration on certain issues affecting low power television and television and FM translator applicants (most of whom are small businesses).

Description and Estimate of the Number of Small Entities Involved

11. *Definition of a ''Small Business''.* Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

12. In the FRFA, we utilized the definition of ''small business'' promulgated by the SBA, even though, as discussed in detail in the FRFA, we tentatively believed that the SBA's definition of ''small business'' overstated the number of radio and television broadcast stations that were small businesses and was not particularly suitable for our purposes. No petitions or comments were received concerning the Commission's use of the SBA's small business definition for the purposes of the FRFA, and we will therefore continue to employ such definition for this Supplemental FRFA.

13. *Issues in Applying the Definition of a ''Small Business''.* As discussed below, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities affected by the revised application and selection procedures adopted in the *First Report and Order* for the broadcast services and for ITFS. Our estimates reflect our best judgments based on the data available to us.

14. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of the number of broadcasting stations that constitute small businesses do not exclude any radio or television station from the definition of small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the amended application and selection procedures may apply may be overinclusive to this extent.

15. With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

16. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the

power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliates based on SBA's definitions, we relied on the databases available to us to provide us with that information.

17. *Estimates Based on Census Data.* The rules and policies adopted in the *First Report and Order* will apply to the various broadcast and secondary broadcast services and to ITFS. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

18. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly steady as indicated by the approximately 1,590 operating television broadcasting stations in the nation as of January 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, of the 1,590 television stations approximately 77%, or 1,224, of those stations are considered small businesses. As of January 1999, 2136 low power television stations and 4921 television translator stations were also licensed, and we believe the vast majority of these stations are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

19. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational and other radio stations. Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 census indicates that 96% (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of January 1999, official Commission records indicate that 12,496 radio stations were operating. We conclude that a similarly high percentage (96%) of current radio broadcasting licensees are small entities. As of January 1999, there were also 3171 FM translator/booster stations licensed, and we believe the vast majority of these stations are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

20. In addition, there are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. ITFS is a non-pay, non-commercial educational microwave service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we conclude that up to 1932 of these licensees are small entities.

21. *Pending and Future Applicants Affected by Rulemaking.* The auction selection procedures set forth in the *First Report and Order* will affect pending and future competing applicants for the various commercial broadcast services and for ITFS. We estimate that there are currently pending before the Commission the following mutually exclusive applications: (1) approximately 620 mutually exclusive applications for full power commercial radio stations, and 165 competing applications for full power commercial analog television stations; (2) approximately 275 mutually exclusive applications for low power television stations and television translator stations, and 20 competing applications for FM translator stations; and (3) approximately 200 or more mutually exclusive applications for ITFS stations. The Commission has no data on file as to whether entities with pending permit applications, which are subject to the new competitive bidding selection procedures adopted for the broadcast services, meet the SBA's definition of a small business concern. However, we conclude that, given the smaller size of the markets at issue in the pending applications, most of the entities with pending applications for a permit to construct a new primary or secondary broadcast station are small entities, as defined by the SBA rules. It is not possible, at this time, to estimate the number of markets for which mutually exclusive applications will be received, nor the number of entities that in the future may seek a construction permit for a new broadcast station. Given the fact that fewer new stations (particularly fewer analog television stations) will be licensed in the future and that these stations generally will be located in smaller, more rural areas, we conclude that most of the entities applying for these stations will be small entities, as defined by the SBA rules.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

22. The *First Report and Order* adopted a number of rules that included reporting, recordkeeping and compliance requirements. These requirements were described in detail in the FRFA, and generally remain unchanged by the rule amendments adopted in this *Memorandum Opinion and Order.* The rules adopted in this *Memorandum Opinion and Order* do amend the applicability of the general auction anti-collusion rule (*see* 47 CFR 1.2105(c)) so that mutually exclusive applicants in the secondary broadcast services may discuss settlement or other means of resolving their mutual exclusivities following the short-form application filing deadline. The *Memorandum Opinion and Order* also amends our rules to clarify that certain ownership disclosure requirements set forth in Section 1.2112(a) of the general Part 1 auction rules will not apply to applicants seeking consent to assign or transfer control of broadcast construction permits or licenses.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The FRFA described in considerable detail the steps taken in the *First Report and Order* to minimize significant economic impact on small entities and the alternatives considered. The rule amendments adopted in this *Memorandum Opinion and Order*

should also serve to minimize the adverse impact of our broadcast auction rules on small entities. First, the *Memorandum Opinion and Order* amends the applicability of the general auction anti-collusion rule so that competing low power television, television and FM translator, and ITFS applicants will have an opportunity to settle or otherwise resolve their mutual exclusivities following the short-form application filing deadline (and thereby avoid the need to go to auction). Second, the *Memorandum Opinion and Order* refines in various ways the eligibility standards for the new entrant bidding credit, which provides a tiered credit for broadcast auction winning bidders with no, or very few, other mass media interests. Third, the *Memorandum Opinion and Order* also lengthens from 10 to 15 days the period for the filing of petitions to deny against the long-form applications filed by winning bidders in the secondary broadcast services and in ITFS. Finally, the *Memorandum Opinion and Order* reduces the burden on all broadcast applicants (including small businesses) seeking consent to assign or transfer control of broadcast construction permits or licenses by clarifying that the ownership disclosure requirements set forth in Section 1.2112(a) of the general auction rules are not applicable to such transactions.

Report to Congress

24. The Commission will send a copy of the *Memorandum Opinion and Order,* including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Memorandum Opinion and Order,* including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Authority for issuance of this *Memorandum Opinion and Order* is contained in Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l) and 403.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Reporting and recordkeeping requirements, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.5002 is amended by revising paragraphs (c) and (d) to read as follows:

§ 73.5002 Bidding application and certification procedures; prohibition of collusion.

* * * * *

(c) Applicants in all broadcast service or ITFS auctions will be subject to the provisions of § 1.2105(b) of this chapter regarding the modification and dismissal of their short-form applications. Notwithstanding the general applicability of § 1.2105(b) of this chapter to broadcast and ITFS auctions, the following applicants will be permitted to resolve their mutual exclusivities by making amendments to their engineering submissions following the filing of their short-form applications:

(1) applicants for all broadcast services and ITFS who file major modification applications that are mutually exclusive with each other;

(2) applicants for all broadcast services and ITFS who file major modification and new station applications that are mutually exclusive with each other; or

(3) applicants for the secondary broadcast services and ITFS who file applications for new stations that are mutually exclusive with each other.

(d) The prohibition of collusion set forth in § 1.2105(c) of this chpater, which becomes effective upon the filing of short-form applications, shall apply to all broadcast service or ITFS auctions. Notwithstanding the general applicability of § 1.2105(c) of this chapter to broadcast and ITFS auctions, the following applicants will be permitted to resolve their mutual exclusivities by means of engineering solutions or settlements during a limited period after the filing of short-form applications, as further specified by Commission public notices:

(1) applicants for all broadcast services and ITFS who file major modification applications that are mutually exclusive with each other;

(2) applicants for all broadcast services and ITFS who file major modification and new station applications that are mutually exclusive with each other; or

(3) applicants for the secondary broadcast services and ITFS who file applications for new stations that are mutually exclusive with each other.

3. Section 73.5006 is amended by revising paragraphs (b) and (c) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications.

* * * * *

(b) Within ten (10) days following the issuance of a public notice announcing 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 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.

* * * * *

4. Section 73.5007 is revised to read as follows:

§ 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 § 73.3555(a)(4)(i));

(ii) FM broadcast station—principal community contour (see § 73.3555(a)(4)(i));

(iii) Television broadcast station—television duopoly contour (see § 73.3555(b));

(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 § 73.3555(a)(4)(i));

(ii) FM broadcast station—principal community contour (see § 73.3555(a)(4)(i));

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

(iv) Television broadcast station—television duopoly contour (see § 73.3555(b)); and

(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 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.

5. Section 73.5008 is amended by revising paragraphs (b) and (c) to read as follows:

§ 73.5008 Definitions applicable for designated entity provisions.

* * * * *

(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.

6. Section 73.5009 is revised to read as follows:

§ 73.5009 Assignment or transfer of control.

The reporting requirement contained in § 1.2111(a) of this chapter shall apply to an applicant seeking approval for 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.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

7. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

8. Section 74.912 is revised to read as follows:

§ 74.912 Petitions to deny.

(a) Petitions to deny against the long-form applications filed by winning bidders in ITFS auctions must be filed in accordance with § 73.5006 of this chapter. Petitions to deny against applications for transfers of control of ITFS licensees, or for assignments of ITFS station licenses, must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the transfer or assignment application. In the case of applications for renewal of license, petitions to deny may be filed after the issuance of a public notice of acceptance for filing of the applications and up until the first day of the last full calendar month of the expiring license term. Any party in interest may file a petition to deny any notification regarding a low power ITFS

signal booster station, within the 60 day period provided for in § 74.985(e).

(b) The applicant or notifier may file an opposition to any petition to deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. Except with regard to petitions to deny against the long-form applications of ITFS auction winners, the times for filing such oppositions and replies shall be those provided in § 1.45 of this chapter.

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DEPARTMENT OF DEFENSE

48 CFR Part 213

[DFARS Case 98–D031]

Defense Federal Acquisition Regulation Supplement; Applicability of Buy American Clauses to Simplified Acquisitions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the use of contract clauses that implement the Buy American Act. The rule applies to acquisitions that use the Federal Acquisition Regulation (FAR) clause containing a list of clauses that most commonly apply to simplified acquisitions.

EFFECTIVE DATE: May 7, 1999.

EFFECTIVE DATES: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D031.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 213.302–5 to clarify that, when using the clause at FAR 52.213–4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items), the contracting officer must delete the reference to the clause at FAR 52.225–3, Buy American Act-Supplies. In accordance with DFARS 225.109(d), the clause at FAR 52.225–3 does not apply to DoD. This rule instead requires the contracting officer to use the appropriate Buy American Act clause prescribed by the DFARS.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D031.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 213

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 213 is amended as follows:

1. The authority citation for 48 CFR Part 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.302–5 is revised to read as follows:

§ 213.302–5 Clauses.

(a) Use the clause at 252.243–7001, Pricing of Contract Modifications, in all bilateral purchase orders.

(d) When using the clause at FAR 52.213–4, delete the reference to the clause at FAR 52.225–3, Buy American Act-Supplies. Instead, if the Buy American Act applies to the acquisition, use the clause at—

(i) 252.225–7001, Buy American Act and Balance of Payments Program, as prescribed at 225.109(d); or

(ii) 252.225–7036, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program, as prescribed at 225.408(a)(vi).

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 98–D310]

Defense Federal Acquisition Regulation Supplement; Para-Aramid Fibers and Yarns

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit the procurement of articles containing para-aramid fibers and yarns manufactured in the Netherlands. This rule finalizes the interim rule that was published in the **Federal Register** on January 15, 1999, to implement Section 807 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D310.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for comments was published in the **Federal Register** at 64 FR 2599 on January 15, 1999. The rule implemented Section 807 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261). Section 807 provides that the Secretary of Defense may waive the foreign source restrictions for para-aramid fibers and yarns under certain conditions. The Secretary of Defense delegated this waiver authority to the Under Secretary of Defense (Acquisition and Technology). On February 12, 1999, the Under Secretary of Defense (Acquisition and Technology) issued a determination authorizing the procurement of articles containing para-aramid fibers and yarns manufactured in the Netherlands. Synthetic fabric containing the para-aramid fibers and yarns still must be manufactured in the United States.

Three sources submitted comments in response to the interim rule. All comments were considered in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.