



# PUBLIC NOTICE

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**DA 99-1009**  
May 26, 1999

## **Supplement and Erratum to Public Notice DA 99-940 Announcing Closed Broadcast Auctions Scheduled for September 28, 1999**

The Wireless Telecommunications Bureau and Mass Media Bureau wish to provide guidance concerning the applicability of the Commission's ex parte rules (47 C.F.R. § 1.1200, et seq.) to the closed broadcast auctions scheduled for September 28, 1999.

Note 1 to Section 1.1202(d)(1) of the ex parte rules provides an exception to the general rule that persons who file mutually exclusive applications are considered parties for ex parte purposes with respect to each others' applications. It states that:

Persons who file mutually exclusive applications for services that the Commission has announced will be subject to competitive bidding or lotteries shall not be deemed parties with respect to each others' applications merely because their applications are mutually exclusive.

Note 1 further explains that, where someone has become a party with respect to such an application by other means, e.g., by filing a petition or other objection against the applicant that has been served on the applicant, both the applicant and the objector are deemed parties under Section 1.1208 of the rules. Consequently, any presentation by either the applicant or the objector which, if written, is not served on all parties or, if oral, is made without advance notice to all parties and without opportunity for them to be present is an impermissible ex parte presentation under Section 1.1202(b) of the rules. Similarly, once the applications have been designated for hearing, the persons filing all applications so designated are deemed parties.

Notice is hereby given that all parties to: (1) cases that heretofore have been designated

for hearing before an Administrative Law Judge and have not been terminated (i.e., the hearing has been stayed, at least in part, pending the outcome of the auction and (2) all instances involving applications that have not been designated for hearing but in which a petition to deny or other objection served on the applicant has been filed are subject to the provisions of Sections 1.1208 and 1.1202(b) of the rules. All other applicants, even though they are mutually exclusive with other pending applications, may, without serving other applicants or otherwise complying with ex parte restrictions, freely communicate with the Commission concerning their own applications.

Moreover, in all cases, pursuant to Section 1.1202(a) of the rules, any party may make inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding or request publicly available information about pending proceedings.

In addition, this Public Notice corrects the last sentence appearing in the second paragraph of Section II.(g) and Footnote 14 of Public Notice DA-99-940 to eliminate any references to "stages" in the auction. The closed broadcast auction will be a single stage auction. Hence, the last sentence of the second paragraph of Section II.(g) is corrected to read: "The Bureaus further seek comment on whether this modified stopping rule should be used." The words "each stage of" are removed from Footnote 14.

For further information, contact:

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