



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

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DA 12-963
Released: June 19, 2012

AC BIDCO, LLC AND LIVETV, LLC SEEK FCC CONSENT TO THE ASSIGNMENT OF AN 800 MHZ AIR-GROUND RADIOTELEPHONE SERVICE LICENSE AND REQUEST RULE WAIVERS

WT Docket No. 12-155

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: July 3, 2012
Oppositions Due: July 13, 2012
Replies Due: July 20, 2012

I. INTRODUCTION

AC BidCo, LLC (“AC BidCo”), a wholly-owned subsidiary of Gogo Inc. (collectively, “Gogo”), and LiveTV, LLC (“LiveTV”) (collectively, “the Applicants”) have filed an application (“Application”) pursuant to Section 310(d) of the Communications Act of 1934, as amended,¹ seeking to assign LiveTV’s one megahertz 800 MHz Commercial Aviation Air-Ground Radiotelephone Service (“Commercial Air-Ground”) license to Gogo. The Applicants state that Gogo can combine the additional spectrum with its existing three megahertz Commercial Air-Ground license to satisfy rapidly increasing customer demand and intensive bandwidth use.

II. SECTION 310(d) APPLICATION

The application for consent to the full assignment of the 800 MHz Commercial Air-Ground license from LiveTV to Gogo has been assigned the following file number:

<u>File No.</u>	<u>Licensee/Assignor</u>	<u>Assignee</u>	<u>Lead Call Sign</u>
0005185165	LiveTV, LLC	AC BidCo LLC	WQFX729

III. REQUEST FOR RULE WAIVERS

The Applicants request a waiver of Section 22.853 of the Commission’s rules, which provides that “[n]o individual or entity may hold, directly or indirectly, a controlling interest in licenses authorizing the use of more than three megahertz of spectrum (either shared or exclusive) in the 800 MHz commercial aviation Air-Ground Radiotelephone Service frequency bands.”² The Commission adopted

¹ 47 U.S.C. § 310(d).

² 47 C.F.R. § 22.853.

Section 22.853 prior to the auction and licensing of the two nationwide 800 MHz licenses, finding the restriction would promote competition and efficient spectrum use.³ The Commission added, however, that it would “consider a waiver of the eligibility rule based on a showing that market conditions and other factors would favor common control of more than three megahertz without resulting in a significant likelihood of substantial competitive harm.”⁴ The Applicants state that market conditions justify a waiver due to increased consumer expectation for in-flight broadband services and competition from satellite providers.

The Applicants, to allow for integration of the assigned spectrum, also seek partial waiver of two technical operational rules: Section 22.861 regarding emission limitations⁵ and Section 22.863 regarding frequency stability.⁶

IV. EX PARTE STATUS OF THIS PROCEEDING

Pursuant to Section 1.1200(a) of the Commission’s rules,⁷ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of the Commission’s rules.⁸

Parties making oral *ex parte* presentations are directed to the Commission’s revised *ex parte* rules. Parties are reminded that memoranda summarizing the presentation must contain the presentation’s substance and not merely list the subjects discussed.⁹ More than a one- or two-sentence description of the views and arguments presented is generally required.¹⁰ Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.¹¹

V. GENERAL INFORMATION

The assignment application has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules or policies.

Interested parties must file petitions to deny no later than **July 3, 2012**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings must be filed no later than **July 13, 2012**. Replies to such pleadings must be filed no later

³ Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, *Report and Order and Notice of Proposed Rulemaking*, FCC 04-287, 20 FCC Rcd 4403, 4425-27 ¶¶ 41-43 (2005).

⁴ *Id.* at 4426 ¶ 42.

⁵ 47 C.F.R. § 22.861.

⁶ 47 C.F.R. § 22.863.

⁷ 47 C.F.R. § 1.1200(a).

⁸ 47 C.F.R. § 1.1206.

⁹ *See* 47 C.F.R. § 1.1206(b)(1).

¹⁰ *See id.*

¹¹ *Id.* § 1.1206(b).

than **July 20, 2012**. All filings concerning matters referenced in this Public Notice should refer to WT Docket No. 12-155.

To allow the Commission to consider fully all substantive issues regarding the Application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹² A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

Under the Commission's current procedures for the submission of filings and other documents,¹³ submissions in this matter may be filed electronically though the Commission's Electronic Comment Filing System ("ECFS") or by hand delivery to the Commission.

- **If filed by ECFS**, comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail.
- **If filed by paper**, the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, D.C. 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile); (2) Scott Patrick, Mobility Division, Wireless Telecommunications Bureau, at scott.partrick@fcc.gov or (202) 418-7447 (facsimile); and (3) Jim Bird, Office of General Counsel, at jim.bird@fcc.gov or (202) 418-1234 (facsimile).

Copies of the application and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc. in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The application and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The application is also available electronically through ULS, which may be accessed on the Commission's

¹² See 47 C.F.R. § 1.45(c).

¹³ See FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, 24 FCC Rcd 14312 (2009).

Internet website. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: (202) 418-0530 or TTY: (202) 418-0432.

For further information, contact Scott Patrick, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-2853.

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