

Wyoming.¹ CWC also indicated in Exhibit C to its application that it is exempt from being included in auction proceedings because it is seeking a license to provide a noncommercial educational television service and is a state entity and noncommercial educational licensee. The Commission's *Report and Order* in the reallocation proceeding which led to the instant auction proceeding specifically provided for broadcast services within the Lower 700 MHz Band. *See, Reallocation and Spectrum Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, FCC 01-364, released January 18, 2002. Further, the Commission has provided that such broadcast operations will have primary regulatory status. *Id.* at ¶27, n. 83. CWC is seeking to operate a noncommercial educational television station in accordance with the rules set forth in that *Report and Order*.

2. The Commission's authority to conduct auctions, however, as specified in the Communications Act of 1934, as amended, specifically does not extend to certain types of auctions. See 47 U.S.C. § 309(j)(2). Specifically, the competitive bidding authority does not apply to licenses or construction permits issued by the Commission "for stations described in section 397(6) of this title." 47 U.S.C. § 309(j)(2)(C). Turning to Section 397(6), a noncommercial educational broadcast station or a public broadcast station are defined to mean a television or radio station which "under the rules and regulations of the Commission in effect on November 2, 1978, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association...." 47 U.S.C. § 397(6)(A).

¹ These CMA's are CMA 299 (Casper, Wyoming); CMA 718 (Wyoming 1 - Park); CMA 719 (Wyoming 2 - Sheridan); CMA 720 (Wyoming 3 - Lincoln); CMA 721 (Wyoming 4 - Niobrara); and CMA 722 (Wyoming 5 - Converse).

3. CWC's proposed operation clearly fits within the parameters of a station described by Section 397(6) of the Communications Act. CWC is proposing to operate on former television channels 54 and 59, and such channels were as of 1978 eligible to be licensed as noncommercial educational television stations. As a state board of education, CWC is clearly a public agency. Furthermore, CWC is demonstrably eligible to be a noncommercial educational licensee, as it is already the licensee of a noncommercial educational television station, namely, KCWC-TV, Lander-Riverton, Wyoming.

4. Through this station and number of translators, CWC provides noncommercial educational television service throughout the State of Wyoming under the name of Wyoming Public Television. CWC, together with other Wyoming Community Colleges, is dedicated to helping provide educational opportunities to the residents of Wyoming through Wyoming Public Television. CWC is seeking the CMA authorizations specified in its FCC Form 175 in order to expand and enhance the educational program it already offers through Wyoming Public Television.

5. Specifically, Community Colleges in Wyoming, including CWC, provide a number of telecourses which are aired by Wyoming Public Television throughout the year, and college credit at CWC is available for many of these courses. The areas of study are diverse and have included courses in history, general science, business, computers, and teacher recertification, among others. For the student's convenience, broadcast segments are aired twice a week.

6. Wyoming Public Television's programming for young children also is designed to aid children in becoming ready to learn and to beginning the elementary learning process. For example, one show aired on the Wyoming Public Television stations is "Between the Lions."

University of Kansas research has shown that kindergarten students who viewed the program regularly over a month-long period significantly improved key reading skills. Wyoming Public Television also offers such proven educational programming as “Sesame Street” and “Arthur,” together with new programs such as “Angelina Ballerina,” a show based on the beloved children’s books which teaches valuable life lessons to children.

7. In addition, Wyoming Public Television offers other programming designed to educate viewers about topics especially relevant to the western and inter-mountain region. For example, Wyoming Public Television has aired “FocusWest: Draining the West,” a program which examines critical issues of water supply in the West. Wyoming Public Television also has been airing “Frontier House,” a six-part hands-on history series which examines how three contemporary American families faced 19th-century life in the Montana wilderness.

8. CWC has found, however, that there simply is not enough time in a day to broadcast all of the educational and instructional programming which it would like to provide to the people of Wyoming through use of its television station. CWC is a partner in the Mountain Plains Distance Learning Partnership, which is a part of the Star Schools program sponsored by the U.S. Department of Education. This partnership offers a widely varied curriculum of classes for Grades K-12, college, and adult education. A number of resources specifically designed for Native American learners also are available. The proximity of CWC to the Wind River Indian Reservation, combined with the historically and continuing disadvantaged status of most Native American schools, makes these resources of particular importance. Some of the courses are offered through live videoconferencing classrooms in various locations in Fremont County, Wyoming, through use of CWC’s Star Schools Classroom Network.

9. Wyoming Public Television also offers on-line courses through its TeacherLine. The University of Wyoming has now approved the TeacherLine modules offered by Wyoming Public Television for undergraduate credit. This summer's modules include "Introduction to the One-Computer Classroom," "The Classroom as a Learning Station," "Math in Everyday Life for Grades K-5," and "Publishing on the Web."

10. Through use of the CMA licenses requested, CWC would have more technological options available for providing these educational and instructional programs to Wyoming residents throughout the state and would otherwise be able to further enrich its educational program. The availability of paired channels might also make more interactive educational programming feasible. This could further enhance the live video classroom experience, as well as make the course offerings available in more areas of the state.

11. CWC believes that the CMA licenses sought represent an exciting opportunity to further expand and enhance its overall educational goals in ways which have not been feasible previously. The availability of the new spectrum would open up new vistas and would allow the provision of new educational services through methods not previously possible and in some ways not yet imagined.

12. It is clear, therefore, that CWC is eligible to be a licensee of a noncommercial educational broadcast station, and it is seeking licenses for such stations. Further, as was made clear in *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), the denial of auction authority to the Commission is based upon the noncommercial educational attributes of the station to receive the license and "not on the part of the spectrum in which the station operates..." *Id.* at 229. Therefore, it is clear that the Commission does not have the authority to

require CWC to participate in competitive bidding for the licenses sought in its short-form application. Accordingly, CWC also cannot be required to make any upfront payments or other payments in connection with the auction process.

13. CWC therefore is not submitting an upfront payment at this time. In addition, CWC respectfully requests that its application be accepted and processed outside of the competitive bidding process.

Respectfully submitted,

CENTRAL WYOMING COLLEGE

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