



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA 02-2178
September 9, 2002

Media Bureau to Open Low Power FM Major Amendment Window from October 28, through November 1, 2002, for Certain Pending New Station Applications

Procedures Announced to Permit Certain Applicants to Comply with Third-adjacent Channel Protection Requirements.

By this public notice, the Audio Division of the Media Bureau announces that it will open a filing window to enable certain pending low power FM (LPFM) applicants to amend their applications to comply with the Commission's third-adjacent channel protection rules.

Background. Under the Commission's initial LPFM technical rules, an LPFM station application was not required to provide third-adjacent channel protection to FM stations.¹ Between May 28, and June 8, 2000 ("Window I"), and between July 28, and August 1, 2000 ("Window II"), the Commission received applications for new LPFM stations from various U.S. jurisdictions filed in accordance with this interference standard.² Subsequently, in December 2000, Congress passed legislation requiring the Commission to adopt third-adjacent channel protection standards and to apply the new requirements to all LPFM applications already on file.³

¹ See *Creation of Low Power Radio Service, Report and Order*, 15 FCC Rcd 2205, 2246 (2000) ("R&O") (subsequent history omitted).

² See *Public Notice, Low Power FM Filing Window, FCC to Accept Low Power FM Applications May 30 through June 5, 2000 for Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Mariana Islands, Maryland, Oklahoma, Rhode Island, and Utah*, DA 00-914 (rel. April 28, 2000); *Public Notice, Low Power FM Filing Window Deadline Extended, FCC Extends Filing Window Deadline for Low Power FM New Station Construction Permit Applications Through June 8, 2000*, DA 00-1239, (rel. June 5, 2000); *Public Notice, Low Power FM Filing Window, FCC to Accept Low Power FM Applications August 28, 2000 through September 1, 2000 for Connecticut, Illinois, Kansas, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, Puerto Rico, Virginia, and Wyoming*, DA 00-1697 (rel. July 28, 2000).

³ "Making Appropriations for the Government of the District of Columbia for FY 2001," Pub. L. No. 106-553 114 Stat. 2762 (2000).

Subsequently, the *Second LPFM Report and Order* codified new third-adjacent channel minimum distance separation requirements.⁴ Additionally, in the *Second LPFM R&O*, the Commission acknowledged that it had already received numerous otherwise acceptable applications in Windows I and II that did not comply with the more stringent interference protection standards. Based on an analysis of a subset of these newly short-spaced proposals, the Audio Division determined that most of the affected applications would require “major amendments.”⁵ Under LPFM processing rules, major amendments may only be filed during specified window filing periods.⁶ The *Second LPFM R&O* advised LPFM applicants that the staff would open a remedial filing window for corrective major amendments.

Eligibility. An LPFM applicant may modify its technical proposal in the upcoming major amendment window only if: (1) the application was filed in Window I or II; (2) the application violates current third-adjacent channel separation requirements; and (3) the application, as originally filed, is otherwise technically acceptable. Appendices A and B of the *Second LPFM R&O* list applications that the Audio Division previously determined were eligible to file major amendments in the upcoming window. Additionally, the attached appendix lists several additional eligible applications that the staff subsequently identified. An applicant not included in any of these Appendices that nonetheless believes that it is eligible to file a major amendment must include an exhibit that identifies the facility to which the original application had a third-adjacent channel spacing defect.

Protection Requirements. Major amendments must protect all FM, FM Translator, FM Booster, and TV Channel 6 authorizations. Additionally, the proposed facilities must protect all pending broadcast applications (including all acceptable LPFM applications to which there is no existing conflict) that were filed prior to the date of this Notice.⁷ Major amendments also must protect vacant FM allotments.⁸ If an LPFM application that is amended during the upcoming window fails to satisfy these protection requirements, the applicant will not be provided an opportunity to correct amendment deficiencies. Eligible applicants are not required to protect mutually exclusive LPFM applications that were filed in the same window. This includes applications that, as originally filed, violated current third-adjacent channel protection requirements and those that fully complied with these requirements.

⁴ See *Creation of a Low Power Radio Service*, 16 FCC Rcd 8026 (2001) (“*Second LPFM R&O*”). Additionally, also pursuant to Congress’ mandate, in the *Second LPFM R&O*, the Commission also declared former unlicensed broadcasters to be ineligible for LPFM licenses. This portion of the statute was declared unconstitutional by the U.S. Court of Appeals for the D.C. Circuit and the *Second R&O* was vacated in its entirety. See *Ruggiero v. FCC*, 278 F.3d 1323 (D.C. Cir. 2002). However, that decision was subsequently vacated upon grant of a petition for rehearing *en banc* filed by the United States and the Commission. Rehearing by the full court in the Ruggiero case is currently pending.

⁵ For LP100 stations applications all changes in channel and changes in site greater than 2.0 kilometers would be considered “major.” See 47 C.F.R. § 73.871(c).

⁶ See *Second R&O*, at 8029-30.

⁷ See *R&O* at 2256-57.

⁸ See 47 C.F.R. §§ 73.807 and 73.825.

If two technically acceptable major amendments are in conflict, the applications will be treated as “mutually exclusive” and processed in accordance with the procedures set forth in 47 C.F.R. § 73.872.⁹ **Participation.** Major amendments may only be filed during the window.¹⁰ Any major amendment that is filed after the release of this public notice but, prior to the opening of the filing window, or filed after the close of the filing window will not be considered. Several applicants have already filed major amendments. The staff will retain and process these major amendments. However, such amendments will not receive cut-off rights or any other advantage over an applicant that properly files during the upcoming major amendment window or any FM application filed prior to the release date of this public notice. We strongly encourage applicants that have already filed such amendments to review their filings to confirm that they continue to be technically acceptable. If necessary, such applicants may also file amendments in the window. The window-filed amendment will supersede any prior-filed technical amendment.

Finding an acceptable LPFM Channel. Applicants may use the Media Bureau’s LPFM Channel Finder to help determine if a fully-spaced facility could be authorized at a proposed transmitter site.¹¹ This utility is available on the FCC web site at: <http://www.fcc.gov/mb/audio/lpfm>. The site also provides additional information on the new LPFM service, including the text of the LPFM Report and Order, specific rule requirements for LPFM applicants, and methods to determine the coordinates of an applicant’s proposed transmitter site.

Paper and Electronic Filing. The Commission accepted both the electronic and paper application formats of FCC Form 318, Application for Construction Permit for a Low Power FM Broadcast Station, during Windows I and II.¹² Applicants that originally filed on paper may file amendments during the upcoming window either by using the Media Bureau’s electronic filing system or manually submitting a paper amendment. Neither electronically-filed nor paper-filed amendments will be made publicly available until after the close of the window.

If an application was originally filed electronically, it must be amended electronically via the Consolidated Database System (CDBS) online electronic forms filing system, located at the following

⁹ Applications filed earlier in the window will not receive any preference over those filed later in the window.

¹⁰ Ownership amendments that would result in more than a 50 % change in the ownership an applicant will not be permitted. Major change amendments will not be permitted to correct any technical defects other than third-adjacent channel short-spacings. Major changes in site are permitted. However, the application must continue to comply with the locality requirements of 47 C.F.R. § 73.853(b).

¹¹ The following records were excluded from the Channel Finder database to assist applicants in identifying available channels: (1) the applications listed in Appendices A and B of the *Second LPFM R&O*; (2) the applications listed in the appendix to this notice; and (3) the prematurely filed major change amendments referred to in the “Participation” section of this notice. The Channel Finder database may include applications that a particular amendment need not protect, *i.e.*, all applications that, as originally filed, were mutually exclusive with the amending applicant’s original proposal and that, as initially filed, met current third-adjacent channel protection requirements. As a result, window filers should be aware that the inclusion of acceptable mutually exclusive applications in the Channel Finder database may result in the Channel Finder erroneously failing to identify an available channel or channels at a specified site. Applicants unable to locate acceptable channel via the Channel Finder may wish to engage the services of a consulting communications engineer.

¹² See *e.g.* Public Notice entitled *Low Power FM Filing Window Instructions, FCC Makes Available Electronic Filing for the May 30, 2000 – June 5, 2000 Window for Low Power FM New Station Construction Permit Applications*, DA 00-1175 (rel. May 26, 2000).

site: <http://www.fcc.gov/mb/elecfile.html>.¹³ Electronic filers should simply access their current accounts and complete the steps necessary to submit an amendment to their existing electronic application. Applicants filing electronic amendments to applications that were originally filed on paper should follow these same procedures, except that such applicants must first create a new account at the electronic filing site.

Applicants intending to submit amendments electronically are encouraged to review the Bureau's electronic filing system prior to the opening of the window and to file as early as possible in the window. Electronic filing instructions are available in the CDBS User's Guide. The Guide can be accessed from the following web site: http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/cdbs_ug.htm. Internet access to the CDBS online electronic forms filing system requires, at a minimum, a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. The Commission must receive electronically filed amendments no later than 11:59 PM EST on November 1, 2002.

Written amendments may be submitted in triplicate to the Office of the Secretary. Such amendments must indicate the applicant name, application file number, and the facility identification number. Additionally, such filings should include an exhibit that references the "LPFM Major Amendment Filing Window" and describes the technical changes set forth in the amendment. Furthermore, any amendment must include the signature of an authorized officer of the applicant. While it is not a requirement, we suggest that re-completing the appropriate sections of Form 318 would best ensure that any proposed changes are given the utmost consideration by the staff. This form may be downloaded from the Internet at: <http://www.fcc.gov/mb/mbform.html> and may also be obtained by calling (202)-418-FORM.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Applicants are cautioned, however, that the Commission continues to experience delays in receiving U.S. Postal Service mail. All filings must be addressed to The Secretary, Office of the Secretary, Federal Communications Commission, U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. 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.

The Commission's contractor, Vistrionix, Inc., will receive hand-delivered and messenger-delivered paper filings for The Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. 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. Hand deliveries that include enveloped filings will be denied access to the building.

Contacts. For additional information regarding technical or procedural issues, contact Brian Butler or James Bradshaw at (202) 418-2700. For questions regarding the CDBS electronic filing system, please call (202) 418-2MMB (2662).

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¹³ Amendments will not be accepted via e-mail.

APPENDIX

ADDITIONAL LPFM APPLICANTS ELIGIBLE TO FILE MAJOR AMENDMENTS DURING WINDOW

Applicant	File Number	City	State	Facility ID
AMAZING GRACE FELLOWSHIP	BNPL-20000830AAP	TWIN FALLS	ID	126205
ASSOCIATED STUDENTS, CALIFORNIA STATE UNIVERSITY, CHICO, INC	BNPL-20000608AAN	CHICO	CA	123810
AZALEA GARDEN CHURCH OF GOD / IGLESIA DE DIOS ADONAI	BNPL-20000828ABE	HOLLYWOOD	VA	125887
BLUFF COUNTRY BROADCASTING	BNPL-20000828ADM	HOUSTON	MN	126012
CALVARY CHAPEL OF ARCATA	BNPL-20000605AJI	ARCATA	CA	124464
CALVARY CHAPEL OF THE PASS	BNPL-20000605AJC	BANNING	CA	124422
CANTON CONVENTION & VISTORS BUREAU	BNPL-20000901AAK	CANTON	MS	126610
CHRISTIAN FELLOWSHIP CHURCH	BNPL-20000828ABJ	DU QUOIN	IL	125871
CLARK COMMUNICATIONS	BNPL-20000828AAL	WARRENTON	VA	125913
COMMUNITY ACCESS TELEVISION OF SALINA, INC.	BNPL-20000831ABW	SALINA	KS	126013
DECATUR JR. SR. HIGH SCHOOL	BNPL-20000831COX	DECATUR	MI	132638
FIRST BAPTIST CHURCH- STOCKTON CA	BNPL-20000608ADG	STOCKTON	CA	124757
GEORGIA DEPARTMENT OF TRANSPORTATION	BNPL-20000602AEW	FORSYTH	GA	124173
GLEN ALLEN COMMUNITY CHURCH	BNPL-20000828ACH	GLEN ALLEN	VA	125836
IGLESIA SINAI PENTECOSTES, INC.	BNPL-20000605AFE	GOSHEN	IN	124209
M&M COMMUNITY DEVELOPMENT INC., ATLANTA, GA BRANCH	BNPL-20000602ABB	TUCKER	GA	123736
MAINE SCIENCE & TECHNOLOGY MUSEUM INC	BNPL-20000531ABO	YARMOUTH	ME	123590
SOUTHSIDE BAPTIST CHURCH	BNPL-20000829ACL	EFFINGHAM	IL	126108
THE BROADCASTERS CLUB	BNPL-20000605AES	FORT VALLEY	GA	124185
THE PINEY WOODS SCHOOL	BNPL-20000901ACL	PINEY WOODS	MS	126695
THE POPULAR ASSEMBLY OF NEW HORIZONS 3000 AND HIS SUCESSORS	BNPL-20000829ADA	VIRGINIA BEACH	VA	125974
TRINITY BIBLE CHURCH	BNPL-20000830AAR	POWELL	WY	126226