



PUBLIC NOTICE

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FM Translator Auction Filing Window and Application Freeze

Notice and Filing Requirements Regarding March 10–14, 2003 Window for Certain FM Translator Construction Permits; Notice Regarding Freeze on the Acceptance of FM Translator and FM Booster Minor Change and FM Booster New Construction Permit Applications from February 8 to March 14, 2003.

Report No. AUC-03-83-A (Auction No. 83)

The Media Bureau (“MB”) and the Wireless Telecommunications Bureau (“WTB”) announce an auction filing window for certain FM translator station construction permit applications. The filing window will open on March 10, 2003, and close on March 14, 2003. In connection with this window, MB also announces that it will not accept FM translator and FM booster minor change construction permit applications and FM booster new construction permit applications between February 8, 2003, and March 14, 2003.

Scope: The window is available for non-reserved band (channels 221 to 300) proposals for new FM translator stations and major modifications to authorized FM translator facilities.¹ The Commission also will consider those FM translator station new and major modification applications that were received on or before November 26, 1997, but for which no “A” cut-off list had been released by that date (“Frozen FM Translator Applications”).² Also on file are a number of FM translator station

¹ See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, 13 FCC Rcd 15920, 15975 & n.153 (1998) (“*Broadcast First Report and Order*”), granted in part and denied in part, 14 FCC Rcd 8724 (1999), amended by 14 FCC Rcd 14521 (1999) (granting Bureaus delegated authority to hold separate auctions for each type of broadcast service). A window open for proposals in the non-reserved band provides a filing opportunity for both noncommercial educational (“NCE”) and commercial FM translator applicants. See 47 C.F.R. § 74.1202(b) (specifying, for example, that noncommercial FM translators may be authorized to operate on Channels 201-300).

² See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses, Notice of Proposed Rulemaking*, 12 FCC Rcd

new and major modification applications filed after November 26, 1997, with “freeze waiver” requests (“Freeze Waiver Applications”). These applicants also may participate in the filing window. Freeze Waiver Applications have not been protected from subsequently filed FM translator minor change applications during the *Competitive Bidding NPRM* freeze, and this policy will continue until the window is closed. Accordingly, Freeze Waiver Applications must protect all minor change applications filed on or before February 7, 2003, in order to be considered in the upcoming window, the same requirement that will apply generally to new FM translator station and major change proposals submitted for the first time in the filing window.³

Application Freeze. The Commission imposed a freeze on the filing of FM translator new and major change applications in the *Competitive Bidding NPRM*. MB has continued to process and grant FM translator minor change and FM booster applications under its processing rules since the inception of the freeze. However, MB will institute a temporary freeze on the acceptance of minor change FM translator applications on all channels (channels 201-300) at 12:01 a.m. Eastern Time (“ET”), February 8, 2003. The freeze shall remain in effect until the close of the window. Minor change applications filed during this freeze will be dismissed.

Participation. *All* applicants for new FM translator stations and major modifications to authorized FM translator facilities **must**:

- **If Form 349 IS NOT on file:** File electronically FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, between 12:01 a.m. ET, March 8, 2003 and 6:00 p.m. ET, March 14, 2003. Only Section I, the Tech Box of Section III-A, and the Section VI Certification must be completed at this time. See Attachment A for more information regarding the completion of Form 349. See Attachment D regarding the electronic filing of the Form 349. No fee is required.

Note: A separate Form 349 must be submitted for each new station and major modification proposal.

- **If an FCC Form 349 Frozen FM Translator Application or Freeze Waiver Application IS currently on file:** The applicant should confirm that the information on file is accurate and complete.
 - If no changes in the previously filed Form 349 applications are necessary, the applicant must only file Form 175, as discussed in the next paragraph. The Form 175 must include the file number of **all** previously filed Form 349 applications. Failure to

22363, 22409 (1997) (establishing freeze on the filing of applications for construction permits for new stations and for major changes to existing facilities in all commercial broadcast services) (the “*Competitive Bidding NPRM*”).

³ Frozen FM Translator Applications that were technically acceptable at the time of filing will be entitled to consideration with any subsequently filed and mutually exclusive minor change application. New and major change applications may be filed during the window that are in conflict, either directly or indirectly, with a Frozen FM Translator Application and/or a Freeze Waiver Application. A minor change proposal in conflict with a Frozen FM Translator Application must be filed by February 7, 2003.

include the file number of a pending Form 349 application on the Form 175 will result in dismissal of that Form 349 application.

- If **any** information in a Frozen FM Translator Application or Freeze Waiver Application is no longer accurate and complete, the applicant must file a new Form 349 application electronically, completing Section I, the Tech Box of Section III-A, and the Section VI Certification. See Attachment D regarding the electronic filing of the Form 349. Paper amendments to pending Form 349 applications will not be accepted. By separate filing to the Office of the Secretary, the applicant must request dismissal of the pending paper-filed Form 349 application. A courtesy copy of this dismissal request should be sent to James Bradshaw at 445 12th Street SW, Washington D.C. 20554, Audio Division, Room 2-B450.
- **File electronically a short-form application (FCC Form 175)** by 6:00 p.m. ET March 14, 2003. See Attachments A and B for more information regarding the completion of Form 175, including information on the broadcast new entrant bidding credit. See Attachment C for information regarding the electronic filing of the Form 175. Applicants must specify the CDBS-assigned file number(s) of all Form 349 application(s) on Form 175, at Exhibit F (“Miscellaneous Information”).

Note: Applicants may submit only one Form 175 regardless of the number of Form 349s filed.

- Comply with all provisions outlined in this Public Notice and applicable rules of the Commission.

An applicant’s failure to reference a pending Form 349 application on its Form 175 will result in the dismissal of that Form 349 application. No consideration will be given any proposal for which the required engineering information is not on file by the close of the window. No application filing fee is required at this time.⁴

Application Processing. After the close of the window, the Commission will make mutual exclusivity determinations with regard to all timely and complete filings. Applications received during the filing window that are not mutually exclusive with any other applications submitted in the filing window will be identified by subsequent public notice. Applicants identified as non-mutually exclusive will be instructed to submit the complete FCC Form 349 and filing fee, if required, within 30 days. No amendments to the FM translator filing window Form 349 application, technical or otherwise, will be accepted between the close of the application filing window, March 14, 2003, and the public notice listing the non-mutually exclusive FM translator applications. Complete FCC Form 349 non-mutually exclusive applications will be processed and the staff will release public notices listing those applications determined acceptable for filing. Petitions to deny must be filed within 15 days of the public notice announcing acceptance of the application at issue.⁵

⁴ Given the general inapplicability of the application filing fee at this time, applicants should not respond to Section I, question 3 of FCC Form 349.

⁵ See *id.* § § 73.5006(b), 74.1233(d)(4).

MB and WTB will issue a public notice identifying mutually exclusive applications received during the window.⁶ This public notice also will specify a settlement period for resolving application mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of universal settlements.⁷ Technical amendments submitted by applicants to resolve conflicts must be minor, as defined by the applicable rules of the FM translator service, and must not create any new mutual exclusivity or other application conflict.⁸ No amendments to the FM translator filing window Form 349 application, technical or otherwise, will be accepted between the close of the application filing window, March 14, 2003, and the public notice listing the mutually exclusive FM translator applications. An applicant may only file a technical amendment between the release of the public notice listing the mutually exclusive FM translator applications and the close of the specified settlement period.

As discussed further in Attachment A, applicants will not be permitted to make major modifications to their FCC Form 175s.⁹

The collusion prohibition set forth in 47 C.F.R. § 1.2105 (c) applies to the FM translator auction. To insure the competitiveness and integrity of the auction process, the Commission's Rules prohibit competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements. As further detailed in Attachment A to this public notice, this prohibition becomes effective at the Form 175 filing deadline. Mutually exclusive FM translator applicants may communicate with each other for the purpose of resolving conflicts only during a settlement period that will be specified in a forthcoming public notice.¹⁰

For additional information, contact James Bradshaw or Lisa Scanlan at the Audio Division, Media Bureau at (202) 418-2700.

List of Attachments:

Attachment A: Pre-Auction Procedures

⁶ See *id.* § 74.1233(d)(3). All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction. The Commission is in the process of completing a rulemaking for mutually exclusive situations involving mixed application groups consisting of both NCE and commercial applicants. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 3833 (2002). The newly adopted comparative standards to select among competing applicants for NCE broadcast stations have not yet been implemented because they have been challenged in court. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000), *sub. nom.*, *American Family Association, Inc. v. FCC*, appeal docketed, Case No. 00-1310 (D.C. Cir. July 14, 2000).

⁷ See *id.* § 73.5002(d)(3).

⁸ See *id.* § 74.1233(a)(1).

⁹ See *id.* § 1.2105(b).

¹⁰ See *id.* § 73.5002(d).

Attachment B: Guidelines for Completion of FCC Form 175 and Exhibits
Attachment C: Electronic Filing and Review of the FCC Form 175
Attachment D: Electronic Filing of the FCC Form 349