



PUBLIC NOTICE

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**MEDIA BUREAU OFFERS EXAMPLES TO CLARIFY
THE TREATMENT OF APPLICATIONS AND
RULEMAKING PETITIONS PROPOSING COMMUNITY
OF LICENSE CHANGES, CHANNEL SUBSTITUTIONS,
AND NEW FM ALLOTMENTS**

On November 29, 2006, the Commission released a Report and Order in MB Docket 05-210 amending its rules to permit licensees and permittees of AM and FM stations to request changes in community of license by first-come/first-served minor modification applications.¹ In addition, under new procedures adopted in the *Report and Order*, non-reserved band FM stations may request non-adjacent channel changes by minor modification applications. The rule changes also require the simultaneous filing of Form 301s with petitions to add new vacant allotments to the FM Table of Allotments.²

Applicants employing these new community of license and channel change processes generally must submit their applications with the minor modification application filing fee. However, an applicant submitting a Form 301 simultaneously with a Petition to add a new FM Allotment to the Table must submit the new FM station application filing fee.

The new rules became effective on January 19, 2007. To date, applicants have filed approximately 150 proposals under the new streamlined procedures. The Media Bureau has received numerous questions concerning the revised filing requirements. To assist future applications, the Media Bureau has prepared the following examples to clarify and illustrate these new processes, which are provided in the Attachment. These examples are intended to provide general guidance reflecting the staff's initial interpretation of the new rules. They are not intended to establish binding precedent. The staff will make specific rulings in response to actual applications on a case-by-case basis.

For further information, contact James Bradshaw or Thomas Nessinger, Audio Division, Media Bureau, (202) 418-2700.

¹ *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, FCC 06-163 (rel. Nov. 29, 2006) (“*Report and Order*.”)

² See 47 C.F.R. § 73.202(b).

ATTACHMENT

Paragraph and note references in each example correspond to the text of the *Report and Order*. The following definitions apply:

1. Petition for Rulemaking (“P4RM”)
2. Community of License (“CofL”)
3. FM Radio Station WAAA(FM), licensed to Smalltown, VA, on Channel 221A (“Station A”)
4. FM Radio Station WBBB(FM), licensed to TINYTOWN, VA, on Channel 223A (“Station B”)
5. FM Radio Station WCCC(FM), licensed to Hometown, VA, on Channel 255A (“Station C”)
6. New FM Allotment in Anytown, VA, on Channel 222A (“New Allotment”)
7. AM Radio Station WXXX(AM), licensed to Smalltown, VA (“Station X”)
8. 47 U.S.C. § 307(b) (“Section 307(b)”)
9. 47 U.S.C. § 316 (“Section 316”)
10. All references to rule “Sections” are to Title 47 of the Code of Federal Regulations

Example 1 (New Allotment):

New Allotment Proponent proposes New Allotment to the Table of Allotments for Anytown, Virginia. **Procedure:** New Allotment Proponent must file a P4RM and a Form 301, and submit the appropriate new station application filing fee. See Paragraph 20.

Example 2 (Licensed station changing community):

Station A proposes to change its community of license from Smalltown, VA, to Othertown, VA. **Procedure:** Station A must file Form 301, including the Section 307(b) information required by Question 18 of Section III-B, and submit the appropriate minor modification application fee. See Paragraphs 9-10.

Example 3 (Licensed station upgrading – 3rd adjacent):

Station A proposes to substitute 224C3 for 221A. No change in community of license is proposed. **Procedure:** Station A must file only Form 301 and submit the appropriate minor modification application fee. See Section 73.203(b).

Example 4 (Licensed station changing to a non-adjacent channel):

Station A proposes to substitute 277A for 221A. No change in community of license is proposed. **Procedure:** Station A must file Form 301 and submit the appropriate minor modification application filing fee. See Paragraph 16 and Section 73.3573(a)(1)(iv).

Example 5 (Licensed station proposing a non-adjacent channel upgrade):

Station A proposes to substitute 277C3 for 221A. No change in community of license is proposed. **Procedure:** Station A may file a petition for non-adjacent channel upgrade (similar to a petition for rulemaking). See Paragraph 15.

Or:

Station A may file a minor change application to substitute 277A for 221A. Upon commencement of program tests on 277A and filing of FCC Form 302-FM, Station A may immediately file FCC Form 301 “one-step” modification application to upgrade to 277C3.

Example 6 (Licensed station proposing a non-adjacent channel CofL change):

Station A proposes to substitute 277A for 221A and to change its community of license from Smalltown, VA, to Othertown, VA.

Procedure: Station A cannot change communities on non-adjacent channels in one step. See Section 73.3573(g)(2). However, Station A may file a channel substitution minor modification to change from 221A to 277A. Upon commencement of program tests and filing of FCC Form 302-FM, Station A may file an FCC Form 301, minor modification application, including the Section 307(b) information required by Question 18 of Section III-B, to change CofL to Othertown, VA.

Example 7 (Channel substitution to permit upgrade):

Station A proposes to substitute 287A for 221A to permit Station B to file upgrade from 223A to 223C3.

Procedure: Station A must file Form 301 and submit the appropriate minor modification application filing fee. Station B must file Form 301 and submit the appropriate minor modification application fee. See Paragraph 16 and Section 73.203. Both Form 301s must be submitted the same day and reference one another. See Section 73.3517.

Example 8 (Involuntary channel substitution to permit upgrade):

Station B proposes an involuntary channel change for Station A from 221A to 287A to permit Station B to upgrade from 223A to 223C3.

Procedure: Station A files nothing initially. Station A must file Form 301 or 302-FM only if staff issues an order changing its channel pursuant to Section 316 procedures.

Station B must file Form 301 to upgrade from 223A to 223C3 and submit the appropriate minor modification application filing fee. The Form 301 must include an exhibit referencing the involuntary change proposed for Station A. See Paragraph 16.

Example 9 (CofL change to permit new allotment):

Station A proposes changing CofL from Smalltown, VA, to Othertown, VA, to permit a New Allotment filed by New Allotment Proponent in Anytown, VA.

Procedure: Station A must file Form 301, including the Section 307(b) information required by Question 18 of Section III-B, and submit the appropriate minor modification application filing fee. See Paragraphs 9-10. New Allotment Proponent must file a P4RM and a Form 301, with the appropriate new application filing fee. See Paragraph 20. Both Form 301s and P4RM must be submitted on the same day and must reference one another. See Section 73.3517.

Example 10 (CofL change and non-adjacent channel upgrade to permit new allotment):

Station A proposes changing CofL from Smalltown, VA, to Othertown, VA, and Station B proposes to substitute 287C3 for 223A to permit New Allotment filed by New Allotment Proponent in Anytown, VA.

Procedure: Station A must file Form 301, including the Section 307(b) information required by Question 18 of Section III-B, and must submit the appropriate minor modification application fee. See Paragraphs 9-10. Station B must file a petition for non-adjacent channel upgrade (similar to a petition for rulemaking). See Paragraph 15. New Allotment Proponent must file P4RM and Form 301 and submit the appropriate new application filing fee. See Paragraphs 18 and 21. The two Form 301s and the petition for non-adjacent channel upgrade must be submitted the same day and must reference each of the related filings. See Section 73.3517.

Example 11 (CofL change and involuntary channel substitution to permit new allotment):

Station A proposes changing CofL from Smalltown, VA to Othertown, VA. New Allotment Proponent proposes an involuntary change for Station B from 223A to 287A to permit New Allotment in Anytown, VA.

Procedure: Station A must file Form 301, including the Section 307(b) information required by Question 18 of Section III-B, and must submit the appropriate minor modification application filing fee. See Paragraphs 9-10. Station B files nothing initially. Station B must file Form 301 or 302-FM only if staff issues an order changing its channel pursuant to Section 316 procedures. See Paragraph 16. New Allotment Proponent must file a P4RM and Form 301 with the appropriate new station application fee. The P4RM and the Form 301 must include an exhibit referencing the voluntary change proposed by Station A and the involuntary change proposed for Station B. See Paragraphs 16, 18, and 21. Both Form 301s and P4RM must be submitted the same day and must reference one another. See Section 73.3517.

Example 12 (Five station coordinated modification):

For this example, all changes are interdependent and voluntary. Station A proposes to substitute 225A for 221A. Station B proposes to substitute 254A for 223A. Station C proposes to substitute 287A for 255A. Station D proposes to substitute 295A for 288A. Station E proposes to substitute 221A for 294A.

Procedure: The staff will dismiss these five applications because only four contingent applications may be filed together. See Paragraphs 16 and 17 and Section 73.3517.

Example 13 (Four station coordinated modification plus one involuntary channel change):

Same as Example 12, except that Station E proposes an involuntary channel change for Station A from 221A to 225A.

Procedure: Same as Example 12, because involuntary changes count towards the four application limit set forth in Section 73.3517. See Paragraphs 16 and 17.

Example 14 (Four station coordinated modifications to permit three New Allotments):

For this example, all modifications are interdependent and voluntary to permit new allotments. Station A proposes to substitute 225A for 221A. Station B proposes to substitute 254A for 223A. Station C proposes to substitute 287A for 255A. Station D proposes to substitute 295A for 288A. New Allotment Proponent proposes to add three New Allotments to Smalltown, VA, Tinytown, VA, and Hometown, VA.

Procedure: Unlike examples 12 and 13, such a proposal is permitted, because the New Allotment Proposals do not count toward the four-application limit. See Paragraph 17. Stations A, B, C, and D each must file Form 301 and submit the appropriate minor modification application fee. New Allotment Proponent must file three P4RMs and three Form 301s, and submit the appropriate new station application fees. See Paragraph 16 and Section 73.203. All seven Form 301s must be submitted the same day and reference one another. See Section 73.3517.

Example 15 (Grandfathered short-spaced station proposing CofL change):

Pre-1964 grandfathered short-spaced Station A proposes to change its community of license from Smalltown, VA, to Othertown, VA. Station A does not propose any technical facility modifications.

Procedure: Station A must file Form 301, including the Section 307(b) information required by Question 18 of Section III-B, and submit the appropriate minor modification application filing fee. See Paragraphs 9-10. Such a proposal will violate the assignment reference site requirement of 47 CFR Section 73.3573(g)(4). The staff will consider waiver request in accordance with the policy set forth in *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (MMB 1992).

Example 16 (Winning auction bidder that has not yet filed long-form application proposes CofL change):

Auction winner for Smalltown, VA, on 225A proposes to change CofL to Othertown, VA.

Procedure: Applicant must file Form 301, including the Section 307(b) information required by Question 18 of Section III-B, and submit the new station application fee, per the instructions in the post-auction closing Public Notice. See Paragraphs 9-11 and Section 73.3573(g).

Example 17 (Winning auction bidder with pending long-form proposes to change CofL):

Auction winner for Smalltown, VA, on 225A has already filed its Form 301 to change to 226A in Smalltown, VA. Prior to grant of the long-form application, applicant proposes to change CofL to Othertown, VA, and to substitute fourth adjacent channel 229A for 225A.

Procedure: Applicant may not propose such a modification. Applications of winning auction bidders for new facilities must be mutually exclusive with the original allotment. See Paragraph 11 and Section 73.3573(g)(2).

Example 18 (Licensed NCE FM proposing CofL change):

NCE FM Station A proposes to change its community of license from Smalltown, VA, to Othertown, VA.

Procedure: Station A must file Form 340, including the 307(b) information required by Form 340. See Paragraphs 9-10.

Example 19 (Licensed AM proposing CofL change):

AM Station X proposes to change its community of license from Smalltown, VA, to Othertown, VA.

Procedure: Station A must file Form 301, including the 307(b) information required by Question 12 of Section III-A, and submit the appropriate minor modification application fee. See Paragraphs 9-10 and Section 73.3571(j).

Example 20 (New AM permittee proposing CofL change):

AM Permittee Y proposes to change its community of license from Smalltown, VA, to Othertown, VA. The Permit was filed as a singleton during an AM auction window.

Procedure: Station A must file Form 301, including the 307(b) information required by Question 12 of Section III-A, and submit the appropriate minor modification application fee. The proposed facility must be mutually exclusive with the original construction permit granted out of the auction window. See Paragraphs 9, 10, and 11 and Section 73.3571(j). This example is also applicable to new AM construction permits obtained through settlements or technical resolutions.

Example 21 (Previously MX'd New AM permittee proposing CofL change):

AM Permittee Y proposes to change its community of license from Smalltown, VA, to Othertown, VA. The original Permit was issued to Y based on the award of a dispositive Section 307(b) preference to Smalltown, VA.

Procedure: AM Permittee Y must file Form 301, including the 307(b) information required by Question 12 of Section III-A, and submit the appropriate minor mod fee. The proposed facility must be mutually exclusive with the original construction permit granted out of the auction window, and it must be comparatively superior to the applications that were mutually exclusive to the AM Permittee Y short-form proposal. See Paragraphs 9, 10, and 11 and Section 73.3571(j).

Example 22 (Proposed involuntary assignment modification to permit upgrade):

Station B proposes to upgrade 223A to 223C3. Station B proposal is in conflict with Station A's assignment on 221C3 that was permitted pursuant to "one-step" procedures but never constructed. Station A is currently operating with its licensed facilities on 221A, and Station A has allowed its 223C3 permit to expire. Station B proposes to involuntarily downgrade Station A from 221C3 to 221A.

Procedure: Station A files nothing initially. Station A must file Form 301 or 302-FM only if staff issues an order changing Station A's channel pursuant to Section 316 procedures. Station B must file Form 301 and submit the appropriate minor modification application fee. The Form 301 must reference the need to downgrade Station A's assignment.