



Federal Communications Commission
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Small Entity Compliance Guide

Low Power FM

Sixth Report and Order
FCC 12-144
MM Docket No. 99-25
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This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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Objectives of the proceeding

The *Sixth Report and Order* amends the Commission's technical rules regarding the operation of low-power FM ("LPFM") stations in order to implement the Local Community Radio Act of 2010 ("LCRA"). These amendments are described in detail below. It also makes a number of other changes to the Commission's rules to better promote localism and diversity, which are at the very heart of the LPFM service. These changes also are discussed in detail below. These rules can be found in the link at the end of this Guide. They will take effect on February 8, 2013, except for any information requirements that must be approved by OMB, which will become effective on the date announced in the Federal Register after OMB approves them.

Rules That the Commission Amended

- *Section 73.807:* The *Sixth Report and Order* modifies the Commission's policy regarding waivers of the second-adjacent channel minimum distance separations set forth in Section 73.807 of the rules ("second-adjacent waivers"). As required by the LCRA, the *Sixth Report and Order* requires an applicant seeking a second-adjacent waiver to submit a showing that demonstrates that its proposed operations will not result in interference to any authorized radio service. The *Sixth Report and Order* specifies that a waiver applicant can make this showing in the same manner as an FM translator applicant (*i.e.*, by showing that no actual interference will occur due to intervening terrain or lack of population.) LPFM stations may use undesired/desired signal strength ratio methodology to narrowly define areas of potential interference.

The *Sixth Report and Order* mandates that complaints about interference from stations operating pursuant to second-adjacent waivers come from disinterested listeners and include certain information. For instance, a complaint must include the listener's name and address and the location at which the interference occurs. The *Sixth Report and Order* specifies that the Commission will treat as a "minor change" a proposal to move the transmitter site of an LPFM station operating pursuant to a second-adjacent waiver to a location outside its current service contour in order to co-locate or operate from a site close to a second-adjacent channel station (generally, within 500 meters) and remediate interference to that station.

- *Sections 73.807 and 73.809:* The *Sixth Report and Order* removes all of the intermediate frequency protection requirements applicable to LPFM stations except those established by international agreements (generally, within 320 km of the Canadian or Mexican border).
- *Section 73.810:* The *Sixth Report and Order* modifies the regime governing complaints about and remediation of third-adjacent channel interference caused by LPFM stations. As required by the LCRA, the *Sixth Report and Order* modifies the requirements applicable to complaints about third-adjacent channel interference caused by stations that do not satisfy the third-adjacent minimum distance separations set forth in Section 73.807 of the rules. It also permits such stations to propose to use directional antennas and/or differing antenna polarizations in order to eliminate third-adjacent channel interference caused by their operations.

The *Sixth Report and Order* also modifies the requirements applicable to complaints about third-adjacent interference caused by LPFM stations that satisfy the third-adjacent minimum distance separations set forth in Section 73.807 of the rules. As in the second-adjacent channel context, the *Sixth Report and Order* explains that the Commission will treat as "minor changes" proposals from LPFM stations seeking to remediate third-adjacent channel interference by co-locating or operating from a site close to a third-adjacent channel station.

As required by the LCRA, the *Sixth Report and Order* requires newly constructed LPFM stations that satisfy the third-adjacent channel minimum distance separations set forth in Section 73.807 of the rules to make periodic announcements. The *Sixth Report and Order* states that these announcements must, at minimum, alert listeners of a potentially affected third-adjacent channel station of the potential for interference, instruct listeners to contact the LPFM station to report any interference, and provide contact information for the LPFM station. It also specifies that during the first thirty days after a new LPFM station that satisfies the third-adjacent channel minimum distance separations set forth in Section 73.807 of the rules is constructed, such station must broadcast the announcements at least twice daily. The station must air one of these daily announcements between the hours of 7 a.m. and 9 a.m. or 4 p.m. and 6 p.m. and must vary the time slot in which the announcement is aired, airing it between 7 a.m. and 9 a.m. some days and between 4 p.m. and 6 p.m. other days. If the station does not operate between 7 a.m. and 9 a.m., or 4 p.m. and 6 p.m., it must air the announcement during the first two hours of broadcast operation. All stations must air the second daily announcement outside the foregoing time slots and must vary the times of day at which they broadcast this second daily announcement in order to ensure that the announcements reach all listeners potentially affected by the station's operation. Between days 31 and 365 of operation, the station must broadcast the announcements a minimum of twice per week. The required announcements shall be made between the hours of 7 a.m. and midnight.

- *Section 73.811:* The *Sixth Report and Order* eliminates the LP10 class of LPFM facilities. LP10 stations, of which none had actually been licensed, were authorized to operate with maximum facilities of 10 watts effective radiated power at 30 meters height above average terrain.
- *Section 73.816:* The *Sixth Report and Order* permits applicants seeking second-adjacent waivers to propose to use directional antennas and/or differing antenna polarizations in order to demonstrate that their operations will not cause interference to any authorized broadcast service.
- *Section 73.827:* The *Sixth Report and Order* implements Section 6 of the LCRA by modifying the Commission's rules to address the potential for predicted interference to FM translator input signals from LPFM stations operating on third-adjacent channels. It adopts a basic threshold test designed to identify applications that are predicted to cause interference to FM translator input signals on third-adjacent channels. Specifically, an applicant may not propose a transmitter site within the "potential interference area" of any FM translator station that receives its input signal directly off-air from a full-service FM or FM translator station on a third-adjacent channel. The *Sixth Report and Order* defines the "potential interference area" as both the area within 2 kilometers of the translator site and also the area within 10 kilometers of the translator site within the azimuths from -30 degrees to +30 degrees of the azimuth from the translator site to the site of the FM station being rebroadcast by the translator. In order to ensure that an LPFM applicant protects the correct input signal for an FM translator, the *Sixth Report and Order* recommends that FM translator licensees update the Commission if they have changed their primary station since they last filed a renewal application.

If an applicant proposes to locate its transmitter within the "potential interference area" for another station, the applicant must demonstrate that it will not cause interference by making one of three showings. First, an applicant may demonstrate that the signal strength of the LPFM (undesired) proposal to the signal strength of the FM (desired) station is below 34 dB at all locations. Second, an applicant may use the equation provided in Section 2.7 of the Mitre Report. This equation is as follows: $du = 133.5 \text{ antilog} [(Peu + Gru - Grd - Ed) / 20]$, where du = the minimum allowed separation in km, Peu = LPFM ERP in dBW, Gru = gain (dBd) of the translator receive antenna in the direction of the LPFM site, Grd = gain (dBd) of the translator

receive antenna in the direction of the FM site, and E_d = predicted field strength (dBu) of the FM station at the translator site. Third, an applicant may reach an agreement with the licensee of the potentially affected FM translator regarding an alternative technical solution.

The *Sixth Report and Order* specifies that the Commission will dismiss any application that does not satisfy this threshold test (or demonstrate that it will not cause interference by making one of the three showings). The *Sixth Report and Order* provides that an applicant can petition for reconsideration and reinstatement and make one of the three showings at that time.

- *Section 73.850*: The *Sixth Report and Order* adopts mandatory time-sharing, which currently applies to full-service noncommercial educational stations but not LPFM stations. Mandatory time-sharing will apply to LPFM stations that meet the Commission's minimum operating requirements (5 hours per day on at least 6 days of the week) but do not operate 12 hours per day each day of the year. Time-sharing applications may be filed at any time after an LPFM station completes its third year of licensed operations.
- *Section 73.853*: The *Sixth Report and Order* explicitly authorizes issuance of an LPFM license to a Tribal Nation or an entity owned or controlled by a Tribal Nation ("Tribal Nation Applicant"). The *Sixth Report and Order* revises the localism requirement to clarify that an LPFM applicant must certify that, at the time of application, it is local and must pledge to remain local at all times thereafter. It also revises the definition of "local" to specify that a Tribal Nation Applicant is considered "local" throughout its Tribal Lands.
- *Section 73.855*: The *Sixth Report and Order* amends the Commission's rules to permit Tribal Nation Applicants to own or hold attributable interests in up to two LPFM stations. For information on which interests are attributable, please see Sections 73.858 and 73.3555 of the Commission's rules.
- *Section 73.860*: The *Sixth Report and Order* revises the rules to permit cross-ownership of an LPFM station and up to two FM translator stations by applicants that are not Tribal Nation Applicants and cross-ownership of up to two LPFM stations and four FM translator stations by Tribal Nation Applicants. At the same time, the *Sixth Report and Order* establishes a number of restrictions on such cross-ownership in order to ensure that the LPFM service retains its extremely local focus. Specifically, the *Sixth Report and Order* imposes five limits on cross-ownership. First, entities – other than Tribal Nation Applicants – may own or hold attributable interests in one LPFM station and a maximum of two FM translator stations. Second, the 60 dBu contours of a commonly-owned LPFM station and FM translator station(s) must overlap. Third, an FM translator must receive the signal of its co-owned LPFM station off-air and directly from the LPFM station, not another FM translator station. Fourth, the distance between an LPFM station and the transmitting antenna of any co-owned translator must not exceed 10 miles for applicants in the top 50 urban markets and 20 miles for applicants outside the top 50 urban markets. Fifth, the FM translator station must synchronously rebroadcast the primary analog signal of the commonly owned LPFM station (or for "hybrid" stations, the digital HD-1 program-stream) at all times.

The *Sixth Report and Order* also revises the existing exception to the cross-ownership rule for student-run stations by eliminating the prior limitation on eligibility for student-run LPFM applications by schools with non-student run full power broadcast stations. Instead, the *Sixth Report and Order* alters the LPFM comparative process by adding a selection criterion for applicants with no other broadcast interests.

- *Sections 73.870 and 73.871*: As noted above, the *Sixth Report and Order* amends the Rules to treat as a "minor change" a proposal to move a fully-spaced LPFM station's transmitter outside

its current service contour in order to co-locate or operate from a site close to a third-adjacent channel station and remediate interference to that station.

- *Section 73.872*: The *Sixth Report and Order* makes a number of changes to the point system used to select among mutually exclusive applications for LPFM stations. It extends the established community presence standard from 10 to 20 miles in rural areas. The *Sixth Report and Order* also adopts four new points criteria. Specifically, it adopts a new main studio criterion and requires an applicant seeking to qualify for a point under this criterion to establish a studio within 10 miles of the transmitting antenna (or 20 miles in smaller markets) with a staff presence for at least 20 hours per week between 7 a.m. and 10 p.m. and a local program origination capability. Those seeking such a point must submit certain information (*i.e.*, an address and telephone number for its proposed main studio). The *Sixth Report and Order* specifies that the Commission will award a third point to an LPFM applicant that makes both the local program origination and main studio pledges. It also adopts Tribal Nations and new entrant points. To qualify as a new entrant, an applicant must have no attributable interest in any other broadcast station.

The *Sixth Report and Order* announces the Commission will continue to entertain partial “technical” settlements in the LPFM context. It also modifies the way in which involuntary time-sharing works, shifting from sequential to concurrent license terms and limiting involuntary time sharing arrangements to three applicants. As a result of these changes, an LPFM applicant must submit the date on which it qualified as having an “established community presence” and may be required to submit information to the Commission regarding the time slots it prefers.

Impact on Small Business

These rule modifications will have no significant adverse impact on small entities. In fact, the adopted policies offer significant benefits to small entities, offering them greater flexibility and additional licensing opportunities. Among other things, the *Sixth Report and Order* allows cross-ownership of LPFM and FM translator stations. Likewise, the *Sixth Report and Order* permits Tribal Nation Applicants to own or hold attributable interests in up to two LPFM stations to ensure adequate coverage of Tribal lands. The *Sixth Report and Order* also modifies the point system that the Commission uses to select among mutually exclusive LPFM applications, as set forth above. Finally, the Order extends mandatory time-sharing to the LPFM service. If the licensee of an LPFM station operating for three years does not operate the station 12 hours per day each day of the year, another organization may file an application to share time with that licensee. For more information on the point system, please see Section 73.872 of the Commission’s rules or Part III.D.2. of the *Sixth Report and Order*.

Steps a Small Entity Must Take to Comply

- *Second-Adjacent Waivers*. An organization that seeks a new LPFM construction permit must file an application on FCC Form 318. If that organization proposes a site for the LPFM station’s transmitting antenna that does not satisfy the second-adjacent channel minimum distance separations set forth in Section 73.807, it must include a waiver request with its application. In the waiver request, the organization must demonstrate that its proposed operations will not result in interference to any authorized radio service.
- *Remediation of Second-Adjacent Channel Interference*. An LPFM licensee operating pursuant to a second-adjacent waiver must eliminate any second-adjacent channel interference caused by its operations. It must suspend operation immediately after notification from the Commission

that it is causing such interference. If remediation of such interference requires relocation of the LPFM station's transmitter site outside its current service contour to co-locate or operate from a site close to the station experiencing second-adjacent channel interference, the licensee must file an application on FCC Form 318. Generally, the Commission treats an application to move the transmitter site of an LPFM station outside its current service contour as a major change application that can only be filed during an LPFM filing window. However, where such a move is proposed by an LPFM station operating pursuant to a second-adjacent waiver and will remediate second-adjacent channel interference to another station, the Commission will treat it as a minor change application that can be filed at any time.

An LPFM station operating pursuant to a second-adjacent waiver also may remediate second-adjacent channel interference by proposing to operate with a directional antenna and/or differing polarization. The LPFM station would need to seek authorization for these changes by filing a minor change application on FCC Form 318 and would need to include technical information about its proposed operations.

- *Remediation of Third-Adjacent Channel Interference.* An LPFM station that does not satisfy the third-adjacent channel minimum distance separations in Section 73.807 must remedy any interference or cease operation. It may remediate third-adjacent channel interference by proposing to use directional antennas and/or differing antenna polarizations. The LPFM station would need to seek authorization for these changes by filing a minor change application and would need to include technical information about its proposed operations.

An LPFM station that satisfies the third-adjacent channel minimum distance separations in Section 73.807 will be given a reasonable opportunity to resolve complaints of interference. It may remediate third-adjacent channel interference by co-locating or operating from a site close to the station experiencing the interference. The LPFM station would need to seek authorization for this move by filing an application on FCC Form 318. Generally, the Commission treats an application to move the transmitter site of an LPFM station outside its current service contour as a major change application that can only be filed during an LPFM filing window. However, where such a move is proposed by an LPFM station that satisfies the third-adjacent channel minimum distance separations and will remediate third-adjacent channel interference to another station, the Commission will treat it as a minor change application that can be filed at any time.

- *Periodic Announcements.* Newly constructed LPFM stations that satisfy the third-adjacent channel minimum distance separations set forth in Section 73.807 of the rules must make periodic announcements to the public about their operations. These announcements must, at a minimum, alert listeners of a potentially affected third-adjacent channel station of the potential for interference, instruct listeners to contact the LPFM station to report any interference, and provide contact information for the LPFM station. During the first thirty-days after a new LPFM station that satisfies the third-adjacent channel minimum distance separations is constructed, such station must broadcast the announcements at least twice daily. The station must air one of these daily announcements between the hours of 7 a.m. and 9 a.m. or 4 p.m. and 6 p.m. and must vary the time slot in which the announcement is aired, airing it between 7 a.m. and 9 a.m. some days and between 4 p.m. and 6 p.m. other days. If the station does not operate between 7 a.m. and 9 a.m., or 4 p.m. and 6 p.m., it must air the announcement during the first two hours of broadcast operation. All stations must air the second daily announcement outside of the foregoing time slots and must vary the times of day at which they broadcast this second daily announcement in order to ensure that the announcements reach all listeners potentially affected by the station's operation. Between days 31 and 365 of operation, the station must broadcast the announcements a minimum of twice per week. The required announcements shall be made between the hours of 7 a.m. and midnight.

- *Protection of FM Translator Input Signals.* An applicant for a new LPFM station should determine whether its proposed transmitter site is within the “potential interference area” for an FM translator input signal on a third-adjacent channel. If it is not, the applicant may file its application on FCC Form 318 and need not include any additional information related to FM translator input signals. If it is, the applicant must include an exhibit to its application that demonstrates that it will not cause interference to an FM translator input signal on a third-adjacent channel. It may do so by making one of three showings set forth in Section 73.827.
- *Mandatory Time-Sharing.* Should an organization wish to file an application for mandatory time-sharing pursuant to Section 73.850, it must file an application on FCC Form 318 and include an exhibit that describes its time-sharing proposal. An organization may file such an application at any time after an LPFM station completes its third year of licensed operations.
- *Multiple Ownership:* If a Tribal Nation Applicant seeks to construct or acquire a second LPFM station, it must file an application just like any other applicant.
- *Cross-Ownership.* If an LPFM licensee seeks to construct or acquire FM translator stations, it must file an application just like any other applicant. This application must include an exhibit that demonstrates that such cross-ownership complies with the five restrictions set forth in Section 73.860 of the rules.
- *Selection Criteria.* If an applicant seeks to claim a point under any of the new selection criteria, it must mark the appropriate boxes in the FCC Form 318. If an applicant claims a point under the main studio criterion, it must also specify the address and telephone number for its proposed main studio in its application.
- *Settlements.* If an applicant is part of a group of mutually exclusive applications and wishes to submit a partial “technical” settlement, it must do so by the deadline established in the public notice announcing a settlement period for its MX group.
- *Involuntary Time-Sharing.* An applicant for a new LPFM station must submit the date on which it qualified as having an “established community presence” on FCC Form 318. It also may be required to submit information to the Commission regarding the time slots it prefers. The applicant will be notified if it needs to submit this information.

Recordkeeping and Other Compliance Requirements

None other than those described above related to periodic announcements by certain newly constructed LPFM stations.

Weblinks

The *Sixth Report and Order*; FCC 12-144, adopted November 30, 2012, and released December 4, 2012. http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1204/FCC-12-144A1.pdf

Creation of a Low Power Radio Service, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations. 78 Fed. Reg. 2078 (January 9, 2013) (Final rule.)
<http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2012-30975.pdf>