



# PUBLIC NOTICE

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## Window Opened to Permit Settlements for Closed Groups Of Mutually Exclusive Broadcast Applications

The Mass Media Bureau (the “Bureau”) announces that it will accept universal settlements until November 30, 2001 for certain pending closed groups of non-reserved channel mutually exclusive AM, FM, FM translator, and television station construction permit applications.

On July 3, 2001, the United States Court of Appeals for the District of Columbia Circuit in *National Public Radio, Inc. et al., v. FCC*, Nos. 00-1246, 00-1255 (decided July 3, 2001) (“*NPR*”) vacated the portion of the Commission’s *Noncommercial Report and Order*, 15 FCC Rcd 7386 (2000) that required noncommercial educational (“NCE”) entities that applied for authorizations in certain non-reserved broadcast spectrum to participate in auctions with mutually exclusive commercial applicants.<sup>1</sup> *NPR* potentially impacts each of the pending mutually exclusive application groups identified in Attachment A to this Public Notice. Opening a window for universal settlements will provide an opportunity to resolve promptly these groups and permit the expeditious authorization of new broadcast service while the Commission formulates its response to the *NPR* decision.

To facilitate this process the Commission directs the Bureau to waive the provisions of 47 C.F.R. § 73.3525(a)(3) and accept universal settlements that involve payments to applicants that exceed their reasonable and prudent expenses. This approach has been used in similar circumstances. Section 73.3525(a) waivers were previously granted to expedite resolution of mutually exclusive applications that were frozen in response to *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). The same approach is codified in Section 309(l)(3) of the Communications Act, which was adopted as part of the Balanced Budget Act of 1997 to promote settlements of long-pending applications.<sup>2</sup> Applicants could not have foreseen the *NPR*

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<sup>1</sup> *Comparative Standards for Noncommercial Educational Applicants*, MM Docket 95-31, *Notice of Proposed Rulemaking*, 10 FCC Rcd 2877 (1995); *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21167 (1998); *Report and Order*, 15 FCC Rcd 7386 (2000) (“*Noncommercial Report and Order*”); *Memorandum Opinion and Order*, 16 FCC Rcd 5074 (2001) (“*Noncommercial MO&O*”).

<sup>2</sup> *Implementation of 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services*, MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, *Notice of Proposed Rulemaking*, 12 FCC Rcd 22363 (1997), *First Report and Order*, 13 FCC Rcd 15920 (1998) (“*Broadcast Auction First Report and Order*”), *reconsid. denied*, 14 FCC Rcd 8724 (1999), *aff’d Orion Communications, Ltd. v. FCC*, 213 F. 3d 761 (D.C. Cir. 2000).

decision or the impact that it would have on pending applications for non-reserved broadcast channels. Moreover, most of these applications were filed prior to the Commission's decision to auction mixed groups. In these circumstances, the limited waiver granted today will not undermine the purpose of Section 73.3525(a) to deter speculative applications. Settlement agreements must otherwise comply with the provisions of 47 U.S.C. § 311(c) and 47 C.F.R. § 73.3525.

The applications listed in Attachment A include the 31 closed groups of pending, non-reserved FM band radio applicants, consisting of 186 cut-off applications, and three groups of non-reserved channel NTSC television applicants involving 13 cut-off applications, in which at least one applicant is an NCE entity.<sup>3</sup> It also includes four groups of non-reserved FM band translator applicants, consisting of eight applications, in which at least one applicant is an NCE entity. Finally, it includes two AM Auction No. 32 mixed groups, consisting of eight applications, in which at least one applicant is an NCE entity.

**Filing Procedures.** Applicants must file an original and two copies of settlement agreements on or before November 30, 2001, with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. In addition, radio applicants are encouraged to deliver a courtesy copy to Liz Robinson, Audio Services Division, Room 2-B450.

For further information contact Lisa Scanlan, Audio Services Division, Mass Media Bureau at 418-2700 or Shaun Maher, Video Services Division, Mass Media Bureau at 418-1600.

Adopted by Chief, Mass Media Bureau

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<sup>3</sup> *Noncommercial MO&O*, 16 FCC Rcd at 5076, note 5.