



Federal Communications Commission  
Washington, D.C. 20554

June 4, 2008

DA 08-1309

## **Small Entity Compliance Guide**

### **THIRD REPORT AND ORDER Creation of a Low Power Radio Service**

FCC 07-204

Released December 11, 2007

MB Docket No. 99-25

**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—to comply with the new rules adopted in the above-referenced FCC rulemaking docket. This Guide is not intended to replace the rules, which provide the final authority in this context. 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 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. Any decisions regarding a particular small entity will be based on application of the statute and regulations. Interested parties are free to file comments regarding this Guide and 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 clarify or update the contents. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:**

**1-888-CALL-FCC (1-888-225-5322)**

**TTY: 1-888-TELL-FCC (1-888-835-5322)**

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### **Background.**

On December 11, 2007, the Federal Communications Commission released a *Third Report and Order and Second Further Notice of Proposed Rulemaking* in MB Docket No. 99-25, 22 FCC Rcd 21912 (2007). The Docket concerns ongoing efforts to promote the operation and expansion of the low power FM (“LPFM”) service. The *Third Report and Order* is intended to clarify ownership and eligibility restrictions for LPFM licensees, as well as technical matters related to the LPFM service.

### **Compliance Requirements.**

The *Third Report and Order* places compliance requirements on you only if you are: (1) an LPFM licensee or applicant; (2) if you were an applicant in the 2003 Auction No. 83 translator filing window and have more than ten proposals pending; or (3) you are a full power station that is implicated in the consideration of a second-adjacent channel short-spacing waiver proposed in an LPFM displacement application to change channels.

### **Small Businesses Affected by This Rule Are Subject to the Commission’s Findings Regarding Ownership and Technical Matters.**

In the *Third Report and Order*, the Commission provides greater flexibility for LPFM licensees and applicants. First, it amends Section 73.865 of the Commission’s rules to clarify that transfers of control involving a sudden change of more than 50 percent of the membership of an LPFM licensee’s governing board shall not be deemed “a substantial change in ownership or control of the station.” The *Third Report and Order* next concludes that the existing rule prohibiting LPFM transfers and assignments is too restrictive, and amends the rule to allow the sale of LPFM licenses under limited circumstances. Limitations on the sale of LPFM licenses include: (1) a cap on the sale amount to the depreciated fair market value of the physical equipment and facilities of the station; (2) a three-year holding period is required for the assignor or transferor from the issuance of license, during which the licensee cannot transfer or assign the license; (3) the requirement that an assignee or transferee of an LPFM license satisfy the ownership and eligibility criteria applicable to LPFM licensees existing at the time of the assignment or transfer; and (4) a prohibition on the assignment or transfer of construction permits for LPFM stations.

The *Third Report and Order* reinstates the original LPFM rule that all authorization holders must be locally-based in the community that they serve and limits ownership to one LPFM station per permittee or licensee. The *Third Report and Order* also clarifies the definition of local origination by making clear that repetitious, automated programming does not meet the local origination requirement, and that in order to meet the requirement, programming cannot be aired more than two times. The *Third Report and Order* also expands the local entity standard for rural communities. The existing rule, under which an LPFM applicant is deemed local if it is physically headquartered or has a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members reside within ten miles of the proposed LPFM transmitter site, is extended to twenty miles for all stations outside of the top fifty urban markets.

The *Third Order* next encourages voluntary time-sharing agreements between applicants for particular facilities that are tied under the Commission's point system for resolving mutually exclusive applications for LPFM licenses. It first extends the deadline for the submission of voluntary time-sharing agreements from 30 to 90 days. The *Third Order* also provides a renewal expectancy to parties to voluntary time-sharing agreements, and also to parties to an involuntary time-sharing arrangement who subsequently reach a voluntary time-sharing agreement, provided that all parties participate in the agreement. When parties reach a universal voluntary time-sharing agreement prior to seeking renewal, a filing submitting the agreement will be viewed as a "minor change," thus allowing parties to file a minor change amendment or application as soon as the agreement is reached, rather than having to wait for a filing window.

The *Third Order* also adopts changes to certain technical rules governing LPFM service. It provides the Media Bureau with the delegated authority to grant an 18-month extension for an LPFM construction permit upon a showing of good cause. The *Third Report and Order* amends the Rules to allow a party to a voluntary time-sharing agreement to file a minor amendment or application to move its transmitter location to a central site, even when such relocation exceeds the current distance limitations for such amendments.

The *Third Report and Order* limited Section 73.809 interference procedures, which require an LPFM station to cease operations if it cannot resolve interference complaints within the 70 dB $\mu$  contour of a subsequently authorized full power station, to complaints of actual interference involving subsequently authorized full service stations on co- and first-adjacent channels.

**Internet Link.**

A copy of the *Report and Order* is available at  
[http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6520007156](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520007156)