



PUBLIC NOTICE

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Media Bureau Provides Guidance to NCE FM Stations Regarding Television Channel 6 Protection Requirements

The Media Bureau (“Bureau”) is issuing this Public Notice to provide guidance to noncommercial educational (“NCE”) FM stations on television Channel 6 protection requirements. These requirements now apply to and will continue to apply to all NCE FM reserved band applications until such time as the Commission expressly states otherwise, regardless of the date on which a potentially impacted television Channel 6 station terminates analog broadcast service.¹

An application for a new or modified NCE station in the FM reserved band must protect a nearby television Channel 6 broadcast station in accordance with Section 73.525 of the Commission’s Rules (the “Rules”).² The NCE applicant must submit either a showing regarding predicted interference or a copy of an agreement between such applicant and the affected Channel 6 station “concurring with the proposed NCE-FM facilities.”³ Several NCE FM station applicants, in anticipation of the former February 17, 2009, deadline for the digital television (“DTV”) transition, have attempted to satisfy Section 73.525 of the Rules by including agreements contingent on the vacation of Channel 6 allotments and the initiation of digital-only television operations. Other applicants have requested Section 73.525 waivers based on the anticipated DTV deadline. The Bureau has also received numerous inquiries from the public asking whether such proposals are acceptable. Accordingly, by this Public Notice, the Bureau clarifies its processing policy with regard to NCE FM applications subject to Section 73.525.

The Bureau will dismiss any NCE FM station application that fails either to (1) satisfy Section 73.525 protection requirements, or (2) include an unconditional consent letter from the affected television Channel 6 station concurring with the proposed NCE FM facilities.⁴ An NCE FM station application must take into account all stations licensed to operate on Channel 6 as of September 7, 2008. Any tentatively selected NCE FM application that relies upon the anticipated termination of analog Channel 6

¹ See *FCC Announces Procedures Regarding Termination of Analog Television Service on or After February 17, 2007*, Public Notice, FCC 09-6, (rel. Feb. 5, 2009). See also DTV Delay Act, S. 352, 111th Cong. (Jan. 29, 2009) (extending the date for the completion of the DTV transition to June 12, 2009).

² See 47 C.F.R. § 73.525.

³ See 47 C.F.R. §§ 73.525(a) and (c).

⁴ The consent of the potentially-impacted Channel 6 station cannot contain contingencies, conditions, qualifications or restrictions.

broadcast service to demonstrate compliance with the Rule, or to request a waiver of the Rule, will be dismissed.⁵ Amendments and petitions for reconsideration based upon the subsequent termination of analog Channel 6 operations will not be entertained.

The Bureau is currently in the process of considering groups of mutually exclusive applications filed during the October 2007 NCE FM filing window and tentatively selecting applications for grant pursuant to threshold fair distribution analyses and point system determinations.⁶ Only tentative selectee applications that either (1) are in compliance with the protection requirements of Section 73.525 of the Rules, or (2) include a rule-compliant unqualified consent from the potentially impacted TV Channel 6 station, are eligible for grant. Any application which does not satisfy one of these requirements and which the staff subsequently identifies as a tentative selectee will be dismissed.

Finally, we recognize that the completion of the DTV transition will create opportunities for NCE FM stations to improve their facilities. Accordingly, by Public Notice, the Bureau will announce a future date at which it will begin accepting applications, premised on the termination of analog TV Channel 6 transmissions. Any minor change application filed before the date established by Public Notice will be dismissed. This forthcoming Public Notice will be released subsequent to the June 12, 2009, deadline for the completion of the DTV transition.⁷

For additional information, contact:

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By: Chief, Media Bureau

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⁵ As the Bureau has previously explained, neither Section 73.525 of the Rules nor established precedent establishes a basis for the acceptance of such contingent arrangements as sufficient to satisfy the TV Channel 6 protection requirements. Moreover, the acceptance of such applications would be fundamentally unfair to applicants that have filed rule-compliant proposals and to potential applicants that have deferred their filings as a result of Channel 6 protection issues. See *Serendipity Educational Broadcasting, Inc.*, Letter, DA 08-2360 (Oct. 28, 2008) (denying reconsideration of the dismissal of new NCE FM station application for failure to satisfy Channel 6 protection requirements or obtain unqualified consent of the affected Channel 6 station); *Family Life Educational Foundation*, Letter, 23 FCC Rcd 4779 (2008) (dismissing NCE FM minor change application for failure to comply with Section 73.525 or obtain unconditional consent from the Channel 6 station).

⁶ The Bureau received approximately 3,600 applications to construct new NCE FM stations during the October 2007 window. The filing window opened on October 12, 2007, and closed October 22, 2007.

⁷ The Commission has stated that it will initiate a separate proceeding to evaluate the existing NCE FM Channel 6 TV protection requirements, and seek public input on their continued viability, following the completion of the DTV transition. See *Digital Audio Broadcasting Systems*, Second Report and Order, 22 FCC Rcd 10344 (2007).