



Federal Communications Commission
Washington, D.C. 20554

April 9, 2012

DA 12-448

Small Entity Compliance Guide

Auction No. 83 Translator Dismissal Policy

Fourth Report and Order

FCC 12-29

MM Docket No. 99-25

MB Docket No. 07-172

RM-11338

Released: March 19, 2012

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 objective of this proceeding is to resume the processing of approximately 6,500 pending translator applications from Auction No. 83 in a manner that most faithfully implements Section 5 of the Local Community Radio Act of 2010 (“LCRA”). Section 5 of the LCRA sets forth criteria that the Commission must take into account when licensing FM translator, FM booster and LPFM stations. Specifically, it requires the FCC, when licensing new FM translator stations, FM booster stations, and low-power FM stations, to ensure that (1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations; (2) such decisions are made based on the needs of the local community; and (3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified FM stations.

The LCRA necessarily requires the Commission to make choices between licensing new LPFM and translator stations in some cases, given that the two services compete for the same limited spectrum. The next LPFM window presents a critical, and indeed possibly a last, opportunity to nurture and promote a community radio service that can respond to unmet listener needs and underserved communities in many urban areas. The processing policy adopted in the *Fourth Report and Order* is designed to facilitate to the maximum extent possible the grant of the pending translator applications in all markets, while at the same time ensuring that adequate spectrum remains available for the upcoming LPFM filing window. To determine LPFM opportunities in major markets, the Media Bureau (“Bureau”) undertook a nationwide LPFM spectrum availability analysis. The Bureau studied all top 150 radio markets, plus markets with 4 or more pending translator applications, centering a thirty-minute latitude by thirty-minute longitude grid over the center-city coordinates of each studied market. Each grid consisted of 961 points – 31 points running east/west by 31 points running north/south (“31x31 grid”). The Bureau analyzed each of the 100 FM channels at each grid point to determine whether any channels remained available for future LPFM stations at that location. Any market in which the number of available LPFM channels was below a specified LPFM channel floor was defined as being “spectrum-limited”, and any market in which the number of available LPFM channels met or exceeded the applicable LPFM channel floor was defined as “spectrum available.”

The *Fourth Report and Order* also modifies the May 1, 2009, date restriction to allow pending FM translator applications that are granted to be used as cross-service translators, i.e., to rebroadcast the signal of a local AM station. This change will allow AM stations to serve their local communities better by, for example, providing pre-sunrise and post-sunset coverage of traffic, weather, news and sports programming, thereby promoting the Commission’s goals of localism, competition, and diversity in the broadcast media.

Rules That the Commission Amended

- The *Fourth Report and Order* adopts a market-specific, spectrum availability-based translator application processing policy. Specifically, it sets forth a processing policy in which the Commission will impose a national application cap of 50 and/or a one application per applicant per market in the markets identified in Appendix A of the *Fourth Report and Order*. It directs the Media Bureau to issue a Public Notice asking applicants affected by the caps to identify applications for continued processing, consistent with these limits. Upon completion of this selection/dismissal process, the Bureau will process the remaining applications in “spectrum available” markets. Applicants that file amendments in these markets must demonstrate that their amended applications will not preclude any LPFM channel/point combination identified in the grid studies. Those applications that fail to do so will be dismissed.

- Applicants with proposals remaining in “spectrum limited” markets will also be given one opportunity to modify their proposals to eliminate all preclusive impacts on certain protected LPFM channel/point combinations. Applications that conflict with protected channel/point combinations and that are not amended to eliminate all such conflicts will be dismissed.
- The *Fourth Report and Order* also modifies certain recently adopted FM translator service rule changes as a result of the enactment of the LCRA. Specifically, it modifies the date restriction contained in Section 74.1232(d) of the Rules to allow pending FM translator applications that are granted to be used as cross-service translators.

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. Specifically, the market-based processing approach ensures additional spectrum for LPFM stations in markets in which it is most limited while also ensuring the immediate licensing of translator stations in communities in which ample spectrum remains for both services, including many major markets.

Removing the date restriction contained in Section 74.1232(d) of the Rules to allow pending FM translator applications that are granted to be used as cross-service translators will also benefit small entities because it will expand opportunities for translator licensees to rebroadcast AM service.

Steps a Small Entity Must Take to Comply with the Translator Dismissal Policy

Auction No. 83 translator applicants must comply with the dismissal procedures in the following manner:

- Parties with more than 50 pending applications nationally and/or more than one pending application in the markets identified in Appendix A must identify their pending applications for which they seek further Commission processing, consistent with the national and market-based caps.
- Parties with applications in the top 150 spectrum-available markets may file amendments demonstrating that their applications will not preclude any LPFM channel/point combination identified in the grid studies. Those applications that fail to do so will be dismissed.
- Parties with applications in the top 150 spectrum-limited markets (within the studied 31x31 grid) must amend their applications to eliminate all preclusive impacts on protected LPFM channel/point combinations. An applicant in a top 50 spectrum-limited market proposing facilities outside the studied 31x31 grid also will need to demonstrate either that no LPFM station could be licensed at the proposed transmitter site or, if an LPFM station could be licensed at the site, that an additional channel remains available for a future LPFM station at the same site (“Top 50 Market Preclusion Showing”). Applications that conflict with protected channel/point combinations or fail to make such a Top 50 Market Preclusion Showing and that are not amended to come into compliance with these requirements will be dismissed.

Steps a Small Entity Must Take to Retransmit an AM Station’s Signal on an FM Translator

In order to retransmit an AM station on an FM translator station, a small entity that operates an AM station must:

- Identify an FM translator that meets the eligibility criteria (authorized by a license or construction permit in effect as of May 1, 2009, or pursuant to an application that was pending as of May 1, 2009, and with a 60 dBu contour that does not extend beyond the smaller of (a) the 2 mV/m daytime contour of the AM station, or (b) a 25-mile radius from the transmitter site). (If an FM translator is authorized to operate locally but its contour exceeds the permitted area, it may be possible to apply on FCC Form 349 for a minor modification of the translator's license to meet the criteria.)
- Either enter into a rebroadcast agreement with the licensee of the translator or enter into an agreement to purchase the translator, subject to FCC approval (on FCC Form 345).
- On any form filed with the FCC, identify the AM station as the primary station to be retransmitted by the translator station. If there is only a retransmission agreement, the licensee of the translator must notify the FCC by letter of the change in primary station and certify that it has written consent from the licensee of the AM station for the retransmission of that station's signal (47 C.F.R. § 74.1284(b)).

Recordkeeping and Other Compliance Requirements

The *Fourth Report and Order* requires Auction No. 83 applicants to identify which applications they wish to preserve to come into compliance with the national and market-based caps. This will enable the Commission to move quickly through a backlog of applications that have been pending since 2003 and open a new filing window for the LPFM service.

Weblinks

- The *Fourth Report and Order and Third Order on Reconsideration*; FCC 12-29, adopted and released March 19, 2012.
http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0320/FCC-12-29A1.pdf
- Creation of a Low Power Radio Service, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations. 77 Fed. Reg. 21002 (April 9, 2012) (Final rule.)
<http://www.gpo.gov/fdsys/pkg/FR-2012-04-09/pdf/2012-8404.pdf>