



# PUBLIC NOTICE

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February 26, 2013

## MEDIA BUREAU ANNOUNCES FM TRANSLATOR AUCTION 83 FILING WINDOW AND FILING PROCEDURES

**March 28, 2013 Deadline Set for Form 349 Applications for  
Non-Mutually Exclusive Tech Box Proposals Outside Spectrum Limited Markets**

### Report No. AUC-03-83-D

Today, the Media Bureau (Bureau) opens a window for the filing of FCC Form 349 (Form 349) FM translator new station construction permit applications for the 713 “tech box” proposals listed in Attachment A. This action continues the Bureau’s expedited Auction 83 licensing initiative in accordance with the procedures adopted in the *Fifth Order On Reconsideration* in the low power FM (LPFM) proceeding.<sup>1</sup> This window is limited to timely filed proposals which are not mutually exclusive with any other applications submitted in the Auction 83 Filing Window<sup>2</sup> and specify transmitter site locations which are (1) outside all Spectrum Limited markets and (2) not within 39 km of any Spectrum Limited market grid.<sup>3</sup> These “singleton” applications are exempt from the Commission’s auction procedures.<sup>4</sup>

<sup>1</sup> See *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402 (2012) (“*Fifth Order*”).

<sup>2</sup> See *FM Translator Auction Filing Window and Application Freeze*, DA 03-359, Public Notice, 18 FCC Rcd 1565 (MB/WTB 2003). The filing window was subsequently extended to March 17, 2003. *FM Translator Auction Filing Window and Application Freeze Extended to March 17, 2003*, Public Notice, 18 FCC Rcd 3275 (MB/WTB 2003) (“Auction 83 Filing Window”).

<sup>3</sup> See *Creation of a Low Power Radio Service*, FCC 12-29, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3398-3406 (2012) (“*Fourth Report and Order*”) (classifying each of 156 studied markets as “Spectrum Limited” or “Spectrum Available”).

<sup>4</sup> See 47 U.S.C. § 309(j); 47 C.F.R. § 73.5005(d); *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920 (1998), Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999) (“*Broadcast Auction First Report and Order*”).

**Required Form and Fees:** Each applicant listed in Attachment A must submit a complete FCC Form 349 by March 28, 2013 (the “Application Deadline”) for each of its listed tech box proposals.<sup>5</sup> All applicants also must submit the required application filing fee, if applicable, and a FCC Form 159, Remittance Advice.<sup>6</sup>

**How to File:** Applicants must file complete Form 349 applications **electronically** through the Bureau’s Consolidated Database System (CDBS) online electronic forms filing system. When filing Form 349, applicants must select “Long Form Application for FM Translator Auction Window 83” on the Pre-form for Form 349 (Question 2 – Application Purpose). In addition, applicants must enter the CDBS file number previously issued to the associated Form 349 tech box proposal in the field “Eng. Proposal File Number.” The “long form” applications and amendments filed during this window will be afforded cut-off protection against subsequently filed applications and amendments.<sup>7</sup> Instructions on using the electronic filing system are available in the CDBS User’s Guide, which can be accessed from the electronic filing web site at:

<http://www.fcc.gov/online-filing>

For technical assistance with electronic filing, call the Bureau CDBS Help Desk at (202) 418-2662.

**Minor Amendments.** An applicant may file a minor amendment to the associated tech box proposal. This includes, but is not limited to, changes to power, height, directional pattern and channel that are considered “minor changes.”<sup>8</sup> The Form 349 application may not create a new conflict to any pending Auction 83 tech box proposal. Furthermore, any Form 349 proposal which differs from the original tech box proposal and proposes a transmitter site (1) at a location within the 39 km buffer of ANY defined Market Grid<sup>9</sup> and/or (2) at an out-of-grid location within a Top-50 Spectrum Limited Market must file a preclusion showing as described in Attachment B. Such showings must comply with the requirements delineated in Section II.B of the *Fourth Report and Order*.<sup>10</sup> Applicants must submit all required showings as Exhibit 1 (Section 1, Question 5) of Form 349. Attachment B of this Public Notice provides instructions for preparing the required showings. Applicants should review their showings

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<sup>5</sup> See 47 U.S.C. § 8; 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 1.1110, 73.5005(d), 73.3512, 74.1233(d).

<sup>6</sup> See Schedule of Charges at 47 C.F.R. § 1.1104. Method and form of payment are addressed in 47 C.F.R. §§ 1.1111, 1.1112. See also the Media Services Application Fee Filing Guide and the FCC Form 349 instructions. The general exemptions to charges are specified in 47 C.F.R. § 1.1116. Governmental entities are exempt from this fee requirement. Also exempt are applicants for noncommercial educational FM translator facilities, as defined in 47 C.F.R. § 74.1201(c). When filing a fee-exempt application, an applicant must complete Section I, item 3 of Form 349 and provide an explanation.

<sup>7</sup> See *Broadcast Auction First Report and Order*, 13 FCC Rcd at 15991.

<sup>8</sup> 47 C.F.R. § 74.1233(a).

<sup>9</sup> All markets identified on Appendix A as “Spectrum Limited” have 30x30 minute Market Grids. All other Appendix A Markets used a grid size of either 30x30 minutes or 20x20 minutes, as shown in the far right column of Appendix B. The term “Market Grid” is the 30x30 or 20x20 minute grid specified in Appendices A and B for each studied market. See *Fourth Report and Order*, 27 FCC Rcd at 3398-3406.

<sup>10</sup> *Id.*, 27 FCC Rcd at 3376-88, ¶¶ 28-49 (implementing Section 5 of the LCRA with a market-based processing policy).

thoroughly before submission. Amendments to showings will be permitted during the filing window, provided that the final application amendment does not specify a “major change” from the original tech box proposal.<sup>11</sup> An amended preclusion showing must be complete and sufficient. The staff will review only the last-filed preclusion showing to determine compliance with all application filing requirements. **A preclusion showing filing may not be submitted, amended, corrected, completed, or resubmitted for further consideration after the Application Deadline. Moreover, a preclusion showing will not be treated as a matter subject to amendment pursuant to Section 73.3522(a) of the Rules<sup>12</sup> after the Application Deadline.**

***Application Dismissals.*** The staff will dismiss FCC Form 349 applications not submitted in accordance with the procedures described above. A Form 349 application that, as of the Application Deadline, specifies a “major change”<sup>13</sup> to the facilities specified in the Auction 83 Filing Window tech box and/or creates a new conflict to a pending Auction 83 tech box will be dismissed.<sup>14</sup> The staff also will dismiss, without further processing, any tech box proposal listed in Attachment A if the applicant fails to electronically submit a complete Form 349 application for such tech box by the Application Deadline. The Application Deadline will be strictly enforced.<sup>15</sup>

***Petition to Deny Filing Period.*** The staff will study the submitted “singleton” Form 349 applications for acceptability. It will subsequently issue CDBS-generated Public Notices entitled “Broadcast Applications” listing those applications determined to be acceptable for filing. A petition to deny the FCC Form 349 application must be filed within 15 days following the release of the pertinent Public Notice.<sup>16</sup> Interested parties should monitor these CDBS Broadcast Applications Public Notices.

For additional information, contact Rob Gates or Larry Hannif-Ali of the Audio Division at (202) 418-2700.

***This Public Notice contains the following Attachments:***

**Attachment A:** Singleton Tech Box Proposals Subject to March 28, 2013 Filing Deadline

**Attachment B:** Preclusion Studies for Certain Translator Applications: The Grid Test and the Top-50 Transmitter Site Test

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<sup>11</sup> 47 C.F.R. § 74.1233(a).

<sup>12</sup> 47 C.F.R. § 73.3522(a).

<sup>13</sup> 47 C.F.R. § 74.1233(a).

<sup>14</sup> See *Broadcast Auction First Report and Order*, 13 FCC Rcd at 15991.

<sup>15</sup> See 47 C.F.R. §§ 73.5005, 74.1233(d).

<sup>16</sup> See 47 C.F.R. §§ 73.5006(b), 74.1233(d)(4).