



# PUBLIC NOTICE

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DA 13-427  
March 14, 2013

## **MEDIA BUREAU ANNOUNCES APRIL 1 – APRIL 19 FILING WINDOW FOR FM TRANSLATOR AUCTION 83 PRECLUSION SHOWINGS**

### **Filing Deadline Applies to all Tech Box Proposals Within Spectrum Limited Markets and/or Within 39 km of Spectrum Limited Market Grids; Minor Technical Amendments Permitted**

Today, the Media Bureau (Bureau) announces an April 1 – April 19 window for the filing of Preclusion Showings for the 639 “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 Auction 83 Filing Window<sup>2</sup> proposals which specify transmitter site locations that are (1) inside a Spectrum Limited market<sup>3</sup> and/or (2) within 39 km of any Spectrum Limited Market Grid.<sup>4</sup> Auction 83 Filing Window proposals identified in Attachment A must be amended with a complete Preclusion Showing<sup>5</sup> in order to be processed further.

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<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 listed in Appendix A as “Spectrum Limited” or “Spectrum Available”).

<sup>4</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>5</sup> A Preclusion Showing demonstrates that the FM Translator application, if granted, will not preclude any protected LPFM licensing opportunities. See *Fourth Report and Order*, 27 FCC Rcd at 3385-86. Attachment B of this Public Notice provides instructions for preparing the required showings.

**Required Filing:** Each tech box proposal listed in Attachment A must be amended to include the required Preclusion Showing during a filing window that ends on April 19, 2013 (the “Preclusion Showing Deadline”).

**How to File:** Applicants must file a tech box amendment on FCC Form 349 **electronically** through the Bureau’s Consolidated Database System (CDBS) online electronic forms filing system. When filing an amendment, applicants must select “Amendment to Short 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.” Applicants must submit all required Preclusion Showings as Exhibit 1 (Section 1, Question 5) of Form 349. 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.** The Commission determined that applicants with proposals in Spectrum Limited markets should be given an opportunity to file minor technical amendments (“Technical Amendments”) to their Auction 83 Filing Window tech box proposals to eliminate preclusive impacts to protected LPFM channel/point combinations.<sup>6</sup> Acceptable Technical Amendments include, but are not limited to, changes in channel, site, power, height and antenna pattern that are considered “minor changes.”<sup>7</sup> A Technical Amendment may not create a new conflict to any pending Auction 83 tech box proposal. Any applicant filing a Technical Amendment proposing a transmitter site (1) at a location within the 39 km buffer of ANY Spectrum Available or Spectrum Limited Market Grid and/or (2) at an out-of-grid location within a Top-50 Spectrum Limited Market must also file a Preclusion Showing as described in Attachment B. A Preclusion Showing with regard to a Spectrum Available Market Grid less than 39 km from a proposed transmitter site is only required if the applicant submits a Technical Amendment. See Attachment B, Example C.

**Preclusion Showings.** Preclusion Showings must comply with the requirements delineated in Section II.B of the *Fourth Report and Order*.<sup>8</sup> Applicants must submit all required Preclusion Showings as Exhibit 1 (Section 1, Question 5) of Form 349. Attachment B of this Public Notice provides instructions for preparing the required Preclusion Showings. Applicants should review their Preclusion Showings thoroughly before submission. Amendments to Preclusion Showings will only be permitted during the filing window, provided that the final application amendment does not specify a “major change” from the original Auction 83 Filing Window tech box proposal.<sup>9</sup> An amended Preclusion Showing must be complete and sufficient. The staff will review only the last-filed Preclusion Showing to

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<sup>6</sup> *Id.*, 27 FCC Rcd at 3387-88, ¶48.

<sup>7</sup> 47 C.F.R. § 74.1233(a).

<sup>8</sup> *Id.*, 27 FCC Rcd at 3376-88, ¶¶ 28-49 (implementing Section 5 of the LCRA with a market-based processing policy).

<sup>9</sup> 47 C.F.R. § 74.1233(a).

determine compliance with all application filing requirements. **A Preclusion Showing may not be submitted, amended, corrected, completed, or resubmitted for further consideration after the Preclusion Showing 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>10</sup> after the Preclusion Showing Deadline.** Technical Amendments will be processed on a first-come, first-served basis. Preclusion Showings also will be processed on a first-come, first served basis for the purpose of determining whether an additional LPFM channel remains available at a specific out-of-grid location in a Top-50 Spectrum Limited market.<sup>11</sup>

***Application Dismissals.*** The staff will dismiss Preclusion Showings, Technical Amendments, and associated tech box proposals for any filing that is not submitted in accordance with the procedures described above. The staff will also dismiss any tech box proposal associated with any Technical Amendment that, as of the Preclusion Showing Deadline, specifies a “major change”<sup>12</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.<sup>13</sup> The staff also will dismiss, without further processing, any Auction 83 Filing Window tech box proposal listed in Attachment A if the applicant fails to electronically submit an amended tech box with the required Preclusion Showing by the Preclusion Showing Deadline. The Preclusion Showing Deadline will be strictly enforced.<sup>14</sup>

Only those applicants listed in Attachment A will be able to electronically submit Preclusion Showings and Technical Amendments during the window. If an applicant believes its Auction 83 Filing Window tech box has been erroneously excluded from or erroneously included in Attachment A, please immediately contact James Bradshaw of the Audio Division at (202) 418-2700. 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:** Tech Box Proposals Subject to April 1 – April 19 Filing Window

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

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<sup>10</sup> 47 C.F.R. § 73.3522(a).

<sup>11</sup> See *Fourth Report and Order*, 27 FCC Rcd at 3387 and n.141.

<sup>12</sup> 47 C.F.R. § 74.1233(a).

<sup>13</sup> See *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, 15991 (1998) Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

<sup>14</sup> See 47 C.F.R. §§ 73.5005, 74.1233(d).