



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 17-935
September 28, 2017

SETTLEMENT PERIOD ANNOUNCED FOR CROSS-SERVICE FM TRANSLATOR MUTUALLY EXCLUSIVE APPLICATIONS FOR AUCTION 99

Technical Amendments and Settlement Agreements Due by November 29, 2017

1. Today, the Media Bureau and Wireless Telecommunications Bureau identify all proposals for new FM translators filed in the July 26 – August 2, 2017, filing window that are mutually exclusive with other proposals submitted in the filing window and announce a limited period for those applicants to enter into settlement agreements or otherwise resolve their mutual exclusivities by means of engineering solutions.¹ This limited settlement period will run for a two-month period ending on November 29, 2017. Parties seeking to resolve mutual exclusivities must file a technical resolution amendment or a joint request for approval of their settlement agreement on or before November 29, 2017, and otherwise comply with the terms of this public notice.

2. **MX Groups.** Attachment A to this Public Notice lists all pending mutually exclusive FM translator engineering proposals filed in the July 26 – August 2, 2017, FM translator auction filing window.² These listed applications are subject to the Commission's competitive bidding procedures.³ If an applicant believes that a Form 349 Tech Box proposal has been erroneously omitted from Attachment A, i.e., the Tech Box proposal is in conflict with at least one engineering proposal listed on Attachment A, it should immediately contact the Audio Division staff listed at the end of this Public Notice.

3. **Prohibited Communications.** The prohibition on certain communications set forth in Sections 1.2105(c) and 73.5002(d) and (e) of the Commission's rules became effective for all applicants filing in this auction window on the August 2, 2017, deadline for the filing of FCC Forms 175.⁴ The

¹ See 47 CFR § 73.5002(c) – (e).

² Non-reserved band (Channels 221 to 300) applications for new FM translator stations rebroadcasting certain AM stations were filed pursuant to a June 6, 2017, Public Notice that announced details and filing instructions for that filing window. Applicants were required to file FCC Form 175, Application to Participate in an FCC Auction, and certain sections of FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, which permitted the staff to determine mutual exclusivities between applicants. *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26-August 2, 2017*, Public Notice, 32 FCC Rcd 4663, 4676, paras. 45-47 (MB/WTB 2017) (*Auction 99 Filing Window Public Notice*).

³ See 47 U.S.C. § 309(j); 47 CFR § 73.5000(a); see generally *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) (*Broadcast First Report and Order*), on recon., Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999) (*Broadcast First Reconsideration Order*), on further recon., Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

⁴ See 47 CFR §§ 1.2105(c), 73.5002(d), (e).

Commission's rules provide for a limited opportunity to settle, or otherwise resolve mutual exclusivities, as specified by public notice.⁵ This settlement opportunity extends only to the applicants with mutually exclusive engineering proposals listed in Attachment A and allows for settlement discussions only as to proposals listed in Attachment A.⁶ Once this settlement period is closed, the prohibition on certain communications will again take effect for such applicants and such mutually exclusive engineering proposals.

4. **Technical Resolution Amendments.** Applicants resolving their mutual exclusivities by means of technical resolution amendments may do so by submitting prior to the close of the settlement period an amended FCC Form 349 Section I, the Tech Box of Section III-A, and the Section VI Certification. Technical resolution amendments may be non-universal, but the amendment must resolve all mutual exclusivities between the engineering proposal and all other engineering proposals in the MX group.⁷ A technical resolution amendment must be a "minor" change, as defined by the rules,⁸ to the engineering proposal specified in the original Form 349 application, and must not create new mutual exclusivities or application conflicts. A technical resolution amendment that creates new application conflicts or that proposes a major change will be returned. The staff will request complete FCC Form 349 applications for technically acceptable proposals.⁹

5. **Settlement Agreements.** Applicants resolving their mutual exclusivities by settlement must ensure that their settlement agreements comply with the provisions of Section 311(c) of the Communications Act of 1934, as amended,¹⁰ and the pertinent requirements of Section 73.3525 of the Commission's rules, including, inter alia, reimbursement restrictions.¹¹ In the interest of expediting new FM translator service to the public, the Commission will accept both universal—in which all applicants in the particular MX group participate—and non-universal settlements. Universal settlements, however, are encouraged. Non-universal settlement proposals must eliminate all mutual exclusivities between at least one engineering proposal and all other engineering proposals in the MX group.¹² Prior to the close of the settlement period, parties to the settlement agreement must submit a joint request for approval of settlement, a copy of the settlement agreement, the affidavits required by Section 73.3525(a) of the rules,¹³ and any necessary amendment(s) to their FCC Form 349 Section III-A Tech Box(es). The staff

⁵ See 47 CFR § 73.5002(d).

⁶ Thus, an Auction 99 applicant with a proposal listed in Attachment A may not communicate regarding bids or bidding strategy (including post-auction market structure) with respect to any other proposal(s) it may have submitted during the filing window. See 47 CFR §§ 1.2105(c), 73.5002(d).

⁷ See 47 CFR § 73.5002(e).

⁸ See 47 CFR § 74.1233(a).

⁹ See *infra* note 14.

¹⁰ 47 U.S.C. § 311(c).

¹¹ 47 CFR § 73.3525.

¹² See 47 CFR § 73.5002(e).

¹³ Section 73.3525(a) requires that any such affidavit set forth:

- (a) The reasons why such an agreement is in the public interest;
- (b) A statement that its application was not filed for the purpose of reaching or carrying out a settlement agreement;
- (c) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant;
- (d) The exact nature and amount of any consideration paid or promised;
- (e) An itemized accounting of the expenses for which it seeks reimbursement; and
- (f) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

will ultimately request complete FCC Form 349 applications from the surviving applicant(s) upon approval of the settlement agreement.¹⁴

6. An applicant that seeks to unilaterally dismiss its engineering proposal that removes the mutual exclusivity without having entered a settlement agreement with another applicant nevertheless must submit an affidavit as to whether or not consideration has been promised to or received by such applicant in connection with their dismissal request.¹⁵

7. **Potential Dismissal of Certain NCE FM Translator Applications.** Both commercial and noncommercial educational (NCE) applications were submitted in the 2017 Auction 99 filing window. In accordance with Section 73.5002(b) of the rules, an NCE FM translator application that remains in a mutually exclusive group with a commercial FM translator application after the close of the settlement window is ineligible to participate in Auction 99, and therefore will be returned as unacceptable for filing, and any remaining application(s) for a commercial FM cross-service translator station will be processed in accordance with competitive bidding procedures.¹⁶ For these purposes, any applicant that selected “NCE” status on its FCC Form 175 will be considered noncommercial educational.¹⁷ The Commission will proceed to auction with any remaining mutually exclusive commercial FM translator proposals that are not resolved by the parties.

8. The following applicant selected NCE status on its FCC Form 175:

Calvary Chapel of Twin Falls CDBS (FCC Form 349) File No. 20170726ADV

9. **Filing Procedures for Technical Resolution Amendments.** An applicant filing a technical resolution amendment must submit prior to the close of the settlement period an amended FCC Form 349 Section I, the Tech Box of Section III-A, and the Section VI Certification electronically through the Media Bureau’s Consolidated Database System (CDBS) online electronic forms filing system. When filing a technical resolution amendment, an applicant must select “Amendment to Short Form application for FM Translator Auction Window 99” on the Pre-form for Form 349 (Question 2–Application Purpose). In addition, the CDBS file number previously issued to the Form 349 filed in the Auction 99 initial filing window must be entered on the Pre-form in the field “Eng. Proposal File Number.”¹⁸ Instructions for use of the electronic filing system are available in the CDBS User’s Guide, which can be accessed at http://licensing.fcc.gov/prod/cdbforms/prod/cdb_ug.htm.

10. **Filing Procedures for Settlement Agreements.** Parties filing a joint request for approval of settlement agreements must file an original and two copies, plus one additional copy for each applicant that is a party to the settlement, **on or before November 29, 2017**, with the Commission’s Secretary, Marlene Dortch. Filings must be addressed to the Office of the Secretary, Federal Communications

¹⁴ When submitting the complete FCC Form 349, surviving applicants must simultaneously submit the required Form 349 application filing fee and Form 159, Remittance Advice. See Schedule of Charges at 47 CFR § 1.1104. Method and forms of payment are addressed in 47 CFR §§ 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 CFR § 1.1116. Governmental entities are exempt from this fee requirement. Also exempt are applicants for noncommercial educational FM translator facilities, as defined in 47 CFR § 74.1201(c). When filing a fee-exempt application, an applicant must complete Section I, item 3 of Form 349 and provide an explanation.

¹⁵ 47 CFR § 73.3525(c).

¹⁶ 47 CFR § 73.5002(b).

¹⁷ See 47 U.S.C. § 309(j)(2)(C), 47 CFR § 73.5000(b) (applications for NCE broadcast stations, as described in 47 U.S.C. § 397(6), on non-reserved channels are not subject to competitive bidding procedures).

¹⁸ The CDBS file number issued to the Form 349 Section I and Section III-A Tech Box filed in the Auction 99 filing window is listed in Attachment A to this Public Notice.

Commission, and can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered filings must be delivered to the FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope or box must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to the Federal Communications Commission at 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express or Priority mail must be addressed to 445 12th Street S.W., Room TW-A325, Washington, DC 20554.

11. In addition, such parties should deliver a courtesy copy to Rob Gates, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-B450, Washington, DC 20554.

12. All FCC Form 349 submissions filed during the Auction 99 filing window are available for review in CDBS Public Access. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

13. **Contact Information.** For additional information, contact Rob Gates, Larry Hannif-Ali, Jim Bradshaw or Lisa Scanlan of the Audio Division, Media Bureau at (202) 418-2700.

14. For information on the FCC Form 175 or application of the rules on prohibited communications, contact Lynne Milne in the Auctions and Spectrum Access Division of the Wireless Telecommunications Bureau at (202) 418-0660. For general auction information, contact the Auctions Hotline at (717) 338-2868.

This Public Notice contains the following Attachment:

Attachment A: FM Translator Mutually Exclusive Applications Subject to Auction

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