



PUBLIC NOTICE

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MEDIA BUREAU IDENTIFIES GROUPS OF MUTUALLY EXCLUSIVE APPLICATIONS SUBMITTED IN THE DECEMBER 2023, LPFM FILING WINDOW

OPENS WINDOW TO ACCEPT SETTLEMENTS AND TECHNICAL AMENDMENTS

By this Public Notice, the Media Bureau (Bureau) identifies by group all of the mutually exclusive (MX) applications submitted in the December 2023, filing window for Form 2100, Schedule 318 (Schedule 318) applications for Low Power FM (LPFM) new station construction permits (LPFM Applications).¹ By this Public Notice, the Bureau also announces a 60-day period beginning with the release of this Public Notice and ending May 14, 2024, for MX applicants to enter into and file settlement agreements and/or to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the recent LPFM window.

MX Groups. When the distance between two window applications does not meet the minimum distance separation requirements specified in section 73.807 of the Commission's rules,² the applications are treated as mutually exclusive (MX). An MX group consists of all applications which are MX to at least one other application in the group. The Bureau has identified 109 MX groups, comprising 264 applications.³ The MX groups, and the applications contained within each MX group, are listed in Attachment A. If an applicant believes any application has been erroneously included, or excluded, from one of the MX groups listed in Attachment A, it should notify the Audio Division (Division) as soon as possible, and within 10 days.

Although the Bureau has generally reviewed the applications listed in Attachment A for technical acceptability, the Bureau could, upon further review, determine that one or more applications within an MX group cannot be accepted for filing or granted. The applications identified in the MX groups, therefore, may include applications that the Bureau at a future date determines are subject to dismissal for legal and/or technical defects.⁴

¹ *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*LPFM Procedures Notice*); *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window; Window Open from December 6, 2023 to December 13, 2023*, Public Notice, DA 23-984 (MB October 17, 2023).

² 47 CFR § 73.807.

³ The Bureau received 1,336 Schedule 318 LPFM Applications during the December 2023, LPFM filing window. The Bureau previously identified over 730 technically acceptable LPFM Applications, which are not in conflict with any other application, *i.e.*, singleton applications, and put these applications on Public Notice announcing them as “accepted for filing.”

⁴ In general, an LPFM applicant whose application is dismissed will have one opportunity to file a minor curative amendment to its application and a petition for reconsideration, requesting reinstatement of the application *nun pro* (continued....)

Dismissed MX Applications. In ascertaining the MX groups, and reviewing the applications for acceptability, the Bureau identified two applications with significant technical and/or legal defects and dismissed these applications. These two MX Applications (filed by Portsonic Communications, LLC and Aire Broadcasting Foundation)⁵ are identified with an asterisk as “DISMISSED” in Attachment A.⁶ These dismissals are still subject to appeal and, therefore, not yet final.

In general, a dismissed applicant has one opportunity to request reinstatement of the application *nunc pro tunc*⁷ by filing a minor curative amendment and petition for reconsideration.⁸ Any amendments and petitions for reconsideration seeking reinstatement must be filed within 30 days of the dismissals. In order for an application to be reinstated, the amendment must correct all the application defects, propose only minor changes, comply with all the Commission’s relevant rules, and not create any new application conflicts.

Settlement Period – Resolution of Application Conflicts. MX LPFM applicants have a 60-day period, until May 14, 2024, to resolve conflicts through two methods - settlement agreements or technical amendments.⁹ This filing opportunity is limited to settlement agreements, which may include requests to dismiss applications filed in the window, and/or engineering amendments that resolve all technical conflicts between at least one application and all other MX applications filed in the window.¹⁰ The requirements and procedures for filing settlement agreements and technical amendments are explained

tunc, within 30 days of the dismissal.

⁵ See File Nos. 0000231418 and 0000232190.

⁶ On February 23, 2024, the Bureau dismissed 203 LPFM Applications, filed by Weather Alert Radio Network (WARN), for failure to demonstrate that WARN is a public safety radio service eligible to hold an LPFM authorization. See *Weather Alert Radio Network, Applications for Construction Permits for New Low Power FM Stations in Communities in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia, and the Virgin Islands*, Letter, DA 24-164 (MB Feb. 23, 2024). Several of these WARN applications are mutually exclusive with other LPFM Applications. We note that even if we found WARN was a legitimate public safety radio service applicant, the MX WARN applications would still be dismissed under our rules. Public safety radio applicants were permitted to submit multiple applications in the LPFM filing window, but were required to designate one “priority” application. Non-priority applications are dismissed if competing applications are filed in the same window. See 47 CFR § 73.855(c)(2); see also *Creation of a Low Power Radio Service*, Memorandum Opinion and Order, 15 FCC Rcd 19208, 19239-40 (2000); *LPFM Procedures Notice*, *supra* note 1. Accordingly, the dismissed MX WARN applications are not identified as part of any MX group herein. However, the MX groups, which include dismissed MX WARN applications, are identified with a double asterisk in Attachment A.

⁷ See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984); 47 CFR § 1.106.

⁸ There are exceptions to this policy. For example, if an LPFM application is dismissed for failure to meet the second-adjacent channel spacing requirements, the applicant is prohibited from amending the application to correct the violation and seek reinstatement. See 47 CFR §§ 73.807(a)(1), 73.870(c).

⁹ Although settlement and technical amendments submitted during the 60-day period will receive expedited processing, MX applicants can continue to submit settlements and technical amendments at any time after the release of this Public Notice.

¹⁰ See 47 CFR § 73.872.

below.¹¹

The Bureau will expedite the processing of all complete and rule-compliant settlement agreements and technical amendments that are filed by May 14, 2024.¹² Applicants in MX groups, which have not submitted settlements or technical amendments during this allotted period, will proceed to a comparative analysis.¹³ If applicants in any of the MX groups identified in Attachment A are still negotiating a settlement after May 14, 2024, they should advise the Division of this fact so the Division can withhold further comparative processing.

Settlement Agreements.¹⁴ A settlement must propose the grant of at least one technically acceptable application within a group of mutually exclusive applications and must not create *any* new application conflicts or make any existing conflicts worse.¹⁵ Universal settlements, which resolve the claims of all applications within an MX group, are encouraged, but not required.

Applicants entering into agreements to procure the removal of a conflict between applications by amendment or dismissal of an application must ensure that their settlement agreements comply with the pertinent requirements of section 73.3525 of the Commission's rules, including reimbursement restrictions.¹⁶ Specifically, parties must file with the Bureau:

1. A copy of their settlement agreement and any ancillary agreement(s);
2. A joint request for approval of such agreement; and
3. An affidavit of each party to the agreement setting forth:
 - (a) The reasons why such agreement is in the public interest;
 - (b) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;
 - (c) A certification that neither the applicant nor its principals has received any money or

¹¹ Although LPFM applicants may also communicate and collaborate at any time on aggregating their points and entering into voluntary time-sharing agreements, time share proposals cannot be submitted at this time. Any time-share proposal may *only* be electronically submitted within 90 days after the release of the public notice announcing the tentative selectees in an MX group. *See Media Bureau Provides Guidance on the Processing of Schedule 318 Applications Filed in the LPFM Window*, Public Notice, DA 24-92 (Feb. 1, 2024) (*LPFM Processing Notice*) (detailing, *inter alia*, the procedures and requirements for filing voluntary time-share agreements); 47 CFR § 73.872(c).

¹² Although the Commission's rules permit parties to settle at any time (*see* 47 CFR § 73.7003(d)), we encourage applicants to take advantage of this limited opportunity to enter into settlements. The present window for settlements will provide an opportunity to promptly resolve groups of mutually exclusive applications and permit the expeditious authorization of new broadcast service to these applicants.

¹³ The Commission will compare MX applications under the LPFM point system and tentatively select the application(s) with the highest point total from each MX group for grant. *See* 47 CFR § 73.872(b).

¹⁴ We will process any settlement achieved through technical amendment(s) and/or dismissal(s), which results in our ability to grant at least one singleton application. In the event that the staff determines that a settlement complies with the Commission's rules, we will issue a Public Notice accepting for filing all applications proposed for grant pursuant to the settlement. Petitions to deny these applications may be filed within 30 days of this subsequent Public Notice.

¹⁵ Examples of prohibited changes that make existing conflicts worse include: (1) changing an existing conflict with a nearby proposed facility from a first-adjacent channel that is short-spaced under Section 73.807 of the rules to a co-channel that is short-spaced under section 73.807, and/or (2) reducing the distance to another proposal that is already short-spaced under section 73.807 of the rules.

¹⁶ 47 CFR § 73.3525.

- other consideration in excess of the legitimate and prudent expenses of the applicant;¹⁷
- (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.¹⁸

Unilateral Withdrawals. Applicants that unilaterally request to withdraw their application without having entered into a settlement agreement with another applicant must nevertheless still submit an affidavit as to whether or not consideration has been promised to or received by such applicant in connection with their dismissal.¹⁹

Technical Amendments. Acceptable technical amendments will resolve all conflicts between at least one application and all other applications in the same MX group.²⁰ Only minor engineering amendments, explained below, will be accepted during this 60-day settlement period. Amended applications must specify rule-compliant facilities. Applicants filing technical amendments should carefully consider all legal, e.g., maintaining eligibility as a “local” applicant,²¹ and technical requirements. An amendment that creates any new application conflicts, or that worsens any existing conflicts (such as increasing existing overlap), will be denied. Applicants may file technical amendments as part of a settlement agreement or unilaterally. Applicants are encouraged to file technical amendments promptly. These amendments will be processed under a first-come, first-served basis.²²

*Minor Amendments.*²³ All pending LPFM applicants may *only* file “minor” amendments, which include: (1) site relocations of 11.2 kilometers or less OR site relocations that involve overlap between the 60 dBu service contours;²⁴ (2) channel changes of no more than +/- three channels or to an intermediate frequency (+/- 53 or 54) channel; (3) changes in general or legal information; and (4) changes in ownership where the original parties retain more than 50 percent ownership in the application as originally filed, and changes in ownership where the original parties retain 50 percent or less ownership, provided the change is gradual and/or there is no evidence of a takeover concern or significant effect on the organization’s mission.²⁵

Coordinated and Unilateral Technical Amendments. Applicants filing coordinated technical amendments as part of a settlement agreement must cross-reference all such filings in each amendment. An applicant that unilaterally files an engineering amendment to procure the removal of conflicts with

¹⁷ “Legitimate and prudent expenses” are those expenses reasonably incurred by an applicant in preparing, filing, prosecuting, and settling its application for which reimbursement is being sought. 47 CFR § 73.3525(h).

¹⁸ See 47 CFR § 73.3525.

¹⁹ *Id.* § 73.3525(b).

²⁰ A technical amendment is one in which an applicant removes itself from the MX group to achieve a grant by making minor engineering changes to its own application, without affecting the viability of any of the other applicants to compete for a second station.

²¹ See 47 CFR § 73.853(b).

²² *Id.* § 73.870(e).

²³ The Bureau’s temporary freeze on the filing of any amendments to new LPFM Applications submitted in the December 2023, filing window was lifted on January 31, 2024. See *LPFM Processing Notice*, *supra* note 11.

²⁴ 47 CFR § 73.871(c)(1).

²⁵ See *id.* § 73.871(c)(3). All ownership changes in a governmental applicant are considered minor. *Id.*

other applications, without having entered into a settlement agreement with any other applicant, must nevertheless submit an affidavit stating whether consideration has been promised to or received by such applicant in connection with its engineering amendment.²⁶

Prohibited Amendments. Applicants *may not* amend their applications to increase their comparative point total and *may not* amend their applications to come into compliance with the minimum separation requirements provided in section 73.807 of the Commission's rules.²⁷

Major amendments, such as non-adjacent channel changes and otherwise prohibited site relocations of greater than 11.2 kilometers that do not overlap 60 dBu contours (comparing the amended facilities to the prior proposed facilities), are prohibited at this time.²⁸

Filing Procedures. Joint requests for approval of a settlement, and the above-referenced documents required by section 73.3525 of the rules (the Settlement Package), must be submitted in the form of an amendment to one (or more) of the applicants' pending Schedule 318 LPFM Application in the Bureau's Licensing and Management System (LMS). Specifically, the Settlement Package should be filed by the applicant(s) whose application will survive/continue to be processed, pursuant to terms of the settlement agreement.²⁹ The designated applicant(s) should label the Settlement Package, attached as an amendment to the pending Schedule 318, as "Settlement Agreement" for easy identification by Bureau staff. The Settlement Package should include a cover page detailing the following:

- The LMS file numbers and Facility Identification Numbers of *all* of the other applications that are parties to the particular settlement agreement;
- A brief description of the basic terms of the settlement agreement (referencing any applications that are being dismissed or technically amended and the application(s) which will survive and continue to be processed);
- References to any technical application amendments filed in conjunction with the settlement agreement.

Technical application amendments must also be filed electronically on Schedule 318 through LMS. Paper filed amendments and settlements will *not* be considered. Applicants are encouraged to deliver a courtesy copy of the Settlement Package via email to James Bradshaw, James.Bradshaw@fcc.gov.

For assistance logging into LMS or accessing the Schedule 318, please contact the Commission at (877) 480-3201 (Option 2), Monday-Friday, 8:00 am-6:00 pm EST, or submit a request online at <https://www.fccprod.service-now.com/auls?id=esupport>.

For additional information, please contact: James Bradshaw, James.Bradshaw@fcc.gov;

²⁶ See 47 CFR §73.3525(b).

²⁷ 47 CFR §§ 73.807, 73.870(c).

²⁸ As explained in the *LPFM Processing Notice*, major amendments will only be allowed after the Commission identifies tentative selectees among the MX groups. Tentative selectees will be announced in a series of public notices after the 60-day settlement period. Major amendments will only be allowed within 90 days of the release of a tentative selectee public notice and only with respect to applications in the particular notice.

²⁹ If more than one application in the MX group will survive/continue to be processed pursuant to the terms of the settlement agreement, the Settlement Package should also be filed as an amendment to these additional Schedule 318 applications.

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