



PUBLIC NOTICE

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COMMISSION IDENTIFIES TENTATIVE SELECTEES IN 96 GROUPS OF MUTUALLY EXCLUSIVE APPLICATIONS FILED IN THE LPFM WINDOW; ANNOUNCES A 30-DAY PETITION TO DENY PERIOD AND A 90-DAY PERIOD TO FILE VOLUNTARY TIME-SHARE PROPOSALS AND MAJOR CHANGE AMENDMENTS

By this Public Notice, the Commission considers 96 groups of mutually exclusive (“MX”) applications filed in the recent low power FM (“LPFM”) window¹ and uses a point system to tentatively select applications for grant.² The tentative selectees, *i.e.*, the single applicant with the highest point total or the applicants tied for the highest point total from each MX group, are identified, in **bold**, in Attachment A. Commencing on December 24, 2014, the first business day after the date of the release of this Public Notice, the Commission initiates a 30-day period for filing petitions to deny against the applicants tentatively selected and a 90-day period for the filing of voluntary time-share proposals (point-aggregation requests) and major change amendments.³

Mutually Exclusive Groups: When the distance between the facilities proposed in two window-filed applications does not meet the minimum distance separation requirements specified in 47 C.F.R. § 73.807, the applications are treated as MX. An MX group consists of all applications which are mutually exclusive to at least one other application in the group. The Commission’s Media Bureau (the “Bureau”) released a Public Notice on December 16, 2013, identifying the groups of MX LPFM applications filed during the LPFM Window, and opened a 60-day window within which the applicants

¹ Each application in Group 2 through Group 373 was filed during the October 17, 2013, through November 15, 2013, LPFM open filing window (the “LPFM Window”).

² See 47 C.F.R. § 73.872. The point system analysis must be considered by the Commission because this analysis is considered a simplified “hearing” for purposes of 47 U.S.C. § 155(c)(1).

³ In this Public Notice the Commission uses the point system to compare 281 applications from 96 MX Groups comprising the Southern states of the United States. The Commission previously released two separate Public Notices identifying (1) the tentative selectees from 248 applications in 79 MX Groups comprising the Western states of the United States; and (2) the tentative selectees from 327 applications in 111 MX Groups comprising the Midwestern and Eastern states of the United States. See *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications Filed in the LPFM Window*, FCC 14-96, Public Notice (July 9, 2014); *Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive Applications Filed in the LPFM Window*, FCC 14-132, Public Notice (September 5, 2014). This final Public Notice identifies the tentative selectees from the remaining groups of mutually exclusive LPFM applications.

from each group could communicate with each other and attempt to resolve the conflicts through three methods – technical amendments, settlements, and time-share agreements.⁴

This Public Notice includes mutually exclusive applications for which no amendment, settlement, or time-share agreement was timely filed, or for which the submitted resolution was determined to be unacceptable. When conflicts remain, the Commission applies the LPFM point system to select among the mutually exclusive applications.⁵

Point System Selection Criteria: The Commission compares mutually exclusive groups of LPFM applications under the point system set forth in Section 73.872 of the Commission’s Rules (the “Rules”). The LPFM point system awards a maximum of six merit points, based on six criteria, with one point awarded under each criterion: (1) established community presence of at least two years; (2) commitment to originate local programming; (3) commitment to maintain a main studio; (4) commitment to originate local programming and to maintain a main studio; (5) diversity of ownership; and (6) Tribal applicants serving Tribal lands. These criteria are described in more detail below.

1. Established Community Presence. The Commission awards one point to an applicant that has had an established community presence, for a period of at least two years immediately prior to the filing of the application, in the community that it proposes to serve. To qualify for this point, a nonprofit educational organization applicant must be able to certify that, during the two years prior to the application, (a) it has existed as a nonprofit educational organization, and (b) it has been physically headquartered, has had a campus, or has had 75 percent of its governing board members residing within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside the top 50 urban markets, of the coordinates of the proposed transmitting antenna. A nonprofit educational organization awarded a point for this criterion must submit evidence of its qualifications in an application exhibit.⁶ The evidence must demonstrate the date of commencement of the applicant’s existence and the location of the applicant’s headquarters, campus, or governing board members’ residence during the two years prior to the application filing.⁷ While there is some flexibility in the type of documentation a nonprofit educational organization applicant may provide, no point will be awarded to such an applicant that does not timely submit required documentation.

A Tribal applicant seeking this point need only certify that it is a Tribe and that its Tribal Lands are within the service area of the proposed LPFM station; or that it is a Tribal organization whose controlling Tribe or Tribes has its/their Tribal Lands within the service area of the proposed LPFM station. Tribal organizations created by a Tribe to apply for a LPFM construction permit are not required to have been in

⁴ See *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period*, Public Notice, 28 FCC Rcd 16713 (MB 2013); see also *Media Bureau Provides Further Guidance on the Processing of Form 318 Applications Filed in the LPFM Window*, Public Notice, 28 FCC Rcd 16366 (MB 2013) (“*Procedures PN*”).

⁵ See 47 C.F.R. § 73.872; see also *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2260-64 (2000); *Creation of a Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19246-47 (2000) (“*Memorandum Opinion and Order on Reconsideration*”); *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15459-15471 (2012) (“*Sixth Report and Order*”).

⁶ See 47 C.F.R. §§ 73.872(b)(1); 73.853(b)(1)-(2); see also FCC Form 318, Section III, Question 1a; Instructions to FCC Form 318 at 8-9.

⁷ Such evidence may consist of copies of corporate charters, articles of incorporation, association, or partnership, bylaws, or other written instruments filed with the appropriate governmental agency (e.g., Secretary of State) documenting the applicant’s period of existence. See Instructions to FCC Form 318 at 9.

existence for two years.⁸ A public safety radio applicant must only be able to certify that during the two years prior to the application it had jurisdiction within the service area of the proposed LPFM station.⁹

2. Local Program Origination. The Commission awards one point to an applicant that pledges to originate locally at least eight hours of programming per day. Locally originated programming is programming produced by the licensee within ten miles of the coordinates of the proposed transmitting antenna. Such programming may include licensee produced call-in shows, music selected and played by a disc jockey present on site, broadcasts of events at local schools, and broadcasts of musical performances at a local studio or festival, whether recorded or live.¹⁰

3. Main Studio. The Commission awards one point to an applicant that pledges to maintain a publicly accessible main studio that has local origination capability, is reachable by telephone, is staffed at least 20 hours per week between 7 a.m. and 10 p.m., and is located within 16.1 km (10 miles) of the station's proposed transmitter site for applicants in the top 50 urban markets and within 32.1 km (20 miles) for applicants outside the top 50 urban markets. To be awarded the main studio point, the applicant must specify the proposed address and telephone number for the proposed main studio in the FCC Form 318 at the time of filing the application.¹¹

4. Local Program Origination and Main Studio. The Commission awards one point to an applicant that can certify that it qualifies for one point under both the local program origination and the main studio criteria described in (2) and (3) above.¹²

5. Diversity of Ownership. The Commission awards one point for diversity of ownership (the "new entrant" point) to an applicant that can certify that it holds no attributable interests in any other broadcast station.¹³ Any applicant, including a national organization, however, can qualify for a new entrant point if it submits in its LPFM application, prior to the close of the LPFM Window, a commitment to divest all of its existing media interests (both owned and attributable) before the commencement of operations of its new LPFM station.¹⁴

6. Tribal Applicants Serving Tribal Lands. The Commission awards one point to a Tribal

⁸ See 47 C.F.R. §§ 73.872(b)(1); 73.853(b)(4); see also FCC Form 318, Section III, Question 1b.

⁹ See 47 C.F.R. §§ 73.872(b)(1); 73.853(b)(3); see also FCC Form 318, Section III, Question 1c.

¹⁰ 47 C.F.R. § 73.872(b)(2).

¹¹ 47 C.F.R. § 73.872(b)(3); FCC Form 318, Section III, Question 3.

¹² 47 C.F.R. § 73.872(b)(4); See, e.g., MX Group 216, File No. BNPL-20131028AGA (denying "local program origination and main studio" point to applicant that certified that it does *not* qualify for the "main studio" point).

¹³ 47 C.F.R. § 73.872(b)(5). Although a broadcast interest of a national organization will not be attributed to the local chapter if the local chapter "is separately incorporated and has a distinct local presence and mission" (47 C.F.R. § 73.858(b)), "local chapters" of larger organizations that hold broadcast interests do not qualify for a "new entrant" point. Any broadcast interests held by the "parent" organization are considered attributable for the purposes of this criterion only. Similarly, although a college or university with non-student run broadcast interests may apply for a student-run LPFM station (47 C.F.R. § 73.860(d)), the broadcast interests of the university or college are attributable for purposes of the "new entrant" point. See, e.g., *Sixth Report and Order*, 27 FCC Rcd at 15459. Finally, although a director of an LPFM applicant may hold otherwise attributable interests in a broadcast licensee or media entity without making the LPFM applicant ineligible for a license, provided that the director recuses himself/herself from any matters affecting the LPFM station (47 C.F.R. § 73.858(a)), the director's broadcast interests are still considered attributable to the LPFM applicant for the purpose of the "new entrant" point.

¹⁴ See, e.g., *Creation of Low Power Radio Service*, Sixth Order on Reconsideration, 28 FCC Rcd 14489, n.26 (2013).

Applicant proposing to locate its transmitter site on its “Tribal Lands,” as defined in Section 73.7000 of the Rules.¹⁵

The Commission tallies the total number of points awarded to each mutually exclusive applicant. The applicant(s) with the highest score in an MX group is designated the “tentative selectee.” Applicants tied for the highest point total in a MX group are subject to voluntary and involuntary time-sharing, discussed below.

Point System Review Process. The LPFM application, FCC Form 318, is certification-based, but for some criteria, requires applicants to document their claims by submitting supporting information to the Commission. The Commission’s comparative review of MX applications is based on applicant-provided information. The Commission relies on the certifications, does not independently confirm the accuracy during the review process, but may use random audits to verify the accuracy of the certifications and adherence to the pledges.¹⁶

Applicants were required to report their comparative qualifications as of the date of the filing of an application. Any changes made thereafter may potentially have diminished, but cannot enhance, an applicant’s comparative position. Accordingly, amendments that were filed after the close of the LPFM Window and improved an applicant’s comparative position have not been considered for purposes of the point system.¹⁷ Amendments that adversely affected an applicant’s comparative position have been considered.¹⁸

We have generally awarded the number of points claimed by each applicant in Section III of its application. Certifications, however, which require the applicant to submit documentation or additional information, but which are not supported with any such timely submitted documentation, cannot be credited.¹⁹ Further, the Commission rejects claims where a nonprofit educational organization applicant certifies that it qualifies for a point as an established local applicant but fails to supply the requisite documentation to support its claim.²⁰ We have also denied points where an applicant’s own documentation contradicts its certification that it is eligible for an established local applicant point.²¹

¹⁵ 47 C.F.R. § 73.872(b)(6); *see also* 47 C.F.R. § 73.853(c) (defining a “Tribal Applicant” as a “Tribe or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes”); 47 C.F.R. § 73.7000.

¹⁶ The Commission staff may issue letters of inquiry requiring submission of documentation in connection with such audits. Applicants that fail to fulfill their pledges will be potentially subject to administrative sanctions including the possibility of monetary forfeitures and revocation proceedings. *See* Instructions to FCC Form 318, Section IIIC at 9.

¹⁷ *See* Instructions to FCC Form 318, Section IIIA at 8; 47 C.F.R. § 73.871(b). For example, if an applicant certifies that it does not qualify for a point under one of the point system factors by answering “No” to one of the questions in Section III, it cannot later amend its application to respond “Yes” to that question. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.

¹⁸ For example, an LPFM applicant may lose claimed points, such as the new entrant credit, as a result of changes made after the application filing.

¹⁹ *See* Instructions to FCC Form 318, Section III, Question 1, at 9. Applicants must submit the requisite documentation prior to the close of the window. The Commission does not consider documentation to support a claimed comparative point if it is submitted in a post-window amendment.

²⁰ *See* MX Group 133, File No. BNPL-20131114ARR; MX Group 216, File No. BNPL-20131028AGA; MX Group 219, File No. BNPL-20131114ADL; and MX Group 343, File No. BNPL-20131113BOU. In all of these cases, to support its established community presence claim, each applicant merely submitted a one or two sentence exhibit stating that it has been local and created, registered, or incorporated for X number of years. Each applicant neglected to submit any concrete documentation to verify its non-profit status and period of existence. *See also* MX

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Similarly, we reject claims where an applicant certifies that it qualifies for a main studio point but neglects to provide the proposed address and telephone number for the proposed main studio. We have also rejected claims where an applicant certifies that it is eligible for a point for diversity of ownership, but fails to satisfy this criterion.²² In these cases, we have adjusted the points of such applicants downward.²³

Attachment A – MX Group Point Totals. Attachment A lists, by group number and state, each of the applicants in the mutually exclusive groups analyzed in this Public Notice. The Commission reviewed each listed application pursuant to the LPFM point system comparative process and awarded each applicant a maximum of six merit points applying the criteria discussed above. Attachment A identifies, by applicant name and number of points, the tentative selectee(s) in each MX group. The tentative selectees are identified in **bold**.²⁴

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Group 94, File No. BNPL-20131108ABB; MX Group 100, File No. BNPL-20131112BFZ; and MX Group 117, File No. BNPL-20131112AIF. In each of these cases, the applicant described the purpose of its organization and proposed programming for a new LPFM station, but neglected to submit any concrete evidence in support of its established community presence claim.

²¹ In each of the following applications, the applicant states that its leaders have resided in the community for over two years, but provides no evidence to verify that the organization has been local and established for at least the requisite two years prior to the application. Rather, each applicant’s documentation illustrates that it has been in existence for *less* than the requisite two years prior to the filing. *See* MX Group 92, File No. BNPL-20131113AUA (certificate of incorporation, dated July 2013); MX Group 137, File No. BNPL-20131107ACY (articles of incorporation, dated November 2013); MX Group 140, File No. BNPL-20131112AAJ (articles of incorporation, dated October 2013); MX Group 333, File No. BNPL-20131114AQQ (certificate of formation, dated October 2013); MX Group 333, File No. BNPL-20131107APE (certificate of formation, dated October 2013); MX Group 345, File No. BNPL-20131031ABL (certificate of formation, dated October 2013); MX Group 353, File No. BNPL-20131107APH (certificate of formation, dated October 2013); and MX Group 371, File No. BNPL-20131114BUI (certificate of formation, dated March 2012).

²² *See* MX Group 276, File No. BNPL-20131112BXJ. Although the applicant, the University of Oklahoma, the licensee of multiple non-student run broadcast stations, is eligible for a student-run LPFM station, the broadcast interests of the University are attributable to it for purposes of the new entrant point criterion. Accordingly, it does not qualify for this point. Similarly, in MX Group 279, File No. BNPL-20131113BOP, the broadcast interests of the parent university, University of Central Oklahoma, are attributable to the applicant, UCentral Student Radio – University of Central Oklahoma, for purposes of the new entrant point criterion, and it, therefore, does not qualify for the diversity of ownership point. *See also* note 13, *infra*.

²³ Conversely, any applicant awarded an established community presence or main studio point has provided support for its certification at the time it initially filed the application.

²⁴ We note that in MX Group 3 and MX Group 364, Calhoun County 9-1-1 District and the City of Conroe, public safety applicants, are each tied for the highest point total, but are not identified in bold as tentative selectees. *See* FCC File Nos. BNPL-20131114AGO and 20131113ACA. Not-for-profit organizations and governmental entities proposing to operate a public safety or emergency radio service were permitted to submit multiple applications in the LPFM Window, but were required to designate the “priority” application. Non-priority applications are dismissed if competing applications are filed in the same window. Calhoun County 9-1-1 District and the City of Conroe each filed multiple applications and identified another application (File Nos. BNPL-20131114AGN and BNPL-20131113ABZ, respectively) as the priority application. Accordingly, FCC File Nos. BNPL-20131114AGO and BNPL-20131113ACA will be dismissed upon release of this Public Notice. *See Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd at 19239-40; *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for the October 15 – October 29, 2013, Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854 (MB 2013).

In cases where an applicant claimed points, but failed to satisfy the respective requirements for receipt of such points, Attachment A lists the points claimed followed in parenthesis by the points credited. For example, an applicant that claimed a point for established community presence, but failed to submit the requisite documentation to support its claim would have the notation 1(0) in the established community presence column, *i.e.*, it claimed one point but received none. A note “no exhibit” or “defective exhibit” in the Notes column would indicate that the applicant did not support its established community presence claim, either because it submitted no exhibit or because an exhibit was deemed defective for lack of the most basic information necessary. The Notes section is also used to describe certain application characteristics. For example, the note “Divest Pledge” is used to identify an applicant that pledged to divest all of its media interests before the commencement of operation of its new LPFM station.²⁵ The note “TIME SHARE” identifies tied applicants that are subject to the voluntary and involuntary time-sharing procedures.

Tied Applicants: Voluntary and Involuntary Time-Sharing. The point system analysis of many of the Attachment A MX groups resulted in a tie among several applicants. When mutually exclusive applications have the same point total, the Commission gives the tied applicants a 90-day opportunity to propose voluntary time-sharing arrangements. If the applicants do not enter into a voluntary time-sharing agreement, the Commission will assign involuntary time-sharing arrangements to no more than three of the tied applicants in each MX Group. The voluntary and involuntary time-sharing procedures are discussed in more detail below.

Voluntary Time-Sharing/Point Aggregation. Any two or more of the tied applicants in each MX Group may propose to share use of the frequency by filing a time-share proposal. The 90-day period for filing such proposals shall commence on the first business day after the release of this Public Notice and will end on March 23, 2015, at 6:00 p.m. EST. The proposal must be electronically submitted through the Commission’s Consolidated Database System (“CDBS”) and will be treated as minor amendments to the time-share proponents’ applications and become part of the terms of the station authorization.²⁶ ***Only those applicants tied for the highest point total in an MX Group may enter into a time-sharing agreement and aggregate their points.***²⁷ No point-aggregation requests will be considered from non-high point total applicants.²⁸ Where proposals include all of the tied applications, all of the tied applicants will be treated as tentative selectees; otherwise, time-share proponents’ points will be aggregated. The Commission will aggregate the point totals of applicants that submit acceptable time-share proposals for the purpose of breaking a tie within a mutually exclusive group.²⁹

Time-share proposals must be in writing, signed by each time-share proponent, and satisfy the following requirements: (1) the proposal must specify the proposed hours of operation of each time-share proponent; (2) the proposal must not include simultaneous operation of the time-share proponents; and (3) each time-share proponent must propose to operate for at least 10 hours per week.³⁰

²⁵ See, e.g., MX Group 341, FCC File No. BNPL-20131112BDT (Believers International Broadcasting’s diversity claim is based on a pledge to divest its current NCE FM station, KVJS).

²⁶ 47 C.F.R. § 73.872(c).

²⁷ See 47 C.F.R. § 73.872(c)(explaining the procedures for *tied* applicants to propose voluntary time-sharing arrangements and aggregate their points). Applicants aggregating points must specify the same frequency.

²⁸ Such applicants, however, may continue to file amendments, settlement agreements, and voluntary, non-point aggregation, time-sharing agreements at any time.

²⁹ 47 C.F.R. § 73.872(c).

³⁰ 47 C.F.R. § 73.872(c)(1)(i) – (iii). The agreement can only be modified if all of the parties submit a written agreement, signed by each party, to the Commission, Attention: Audio Division, prior to the change.

Involuntary Time-Sharing. If the tied applicants do not enter into a voluntary time-share agreement, or if a tie still remains following the submission of voluntary time-sharing arrangements, the applicants with tied, grantable applications will be eligible for equal, non-renewable license terms.³¹

MX Groups with Three or Fewer Tied and Grantable Applications. If there are three or fewer tied and grantable applications in an MX group, the Commission will simultaneously grant the applications, assigning an equal number of hours per week to operate the proposed station to each applicant.³² The Commission will determine the hours assigned to each applicant by first assigning hours to the applicant that has been local for the longest uninterrupted period of time,³³ then assigning hours to the applicant that has been local for the next longest uninterrupted period of time. The Commission will offer the applicants an opportunity to voluntarily reach a time-sharing arrangement. If they are unable to do so, we will ask the applicants to simultaneously and confidentially submit their preferred time slots to the Commission. The staff will use the information provided by the applicants to assign time slots, giving preference to the applicant that has been local for the longest uninterrupted period of time.³⁴

MX Groups with More than Three Tied and Grantable Applications. If there are more than three tied and grantable applications, the Commission will dismiss all but the applications of the three applicants that have been local for the longest uninterrupted periods of time. The Commission will then process the remaining applications in accordance with Section 73.872(d)(2) of the Rules, the procedures for mutually exclusive groups with three or fewer tied, grantable applications.³⁵

Major Amendments. Starting December 24, 2014, at 12:01 a.m. EST, the first business day after the date of release of this Public Notice, we open a 90-day period to permit the MX applicants listed in Attachment A to file major amendments, such as non-adjacent channel changes and otherwise prohibited site relocations of greater than 5.6 kilometers.³⁶ This 90-day period for filing major change amendments ends March 23, 2015, at 6:00 p.m. EST. During this filing period, the Commission will waive Section 73.871 of the Rules³⁷ to permit these applicants to file such major change amendments. Major change amendments will be processed in accordance with established first-come, first-served licensing procedures.³⁸

³¹ 47 C.F.R. § 73.872(d).

³² 47 C.F.R. § 73.872(d)(2); *see also* Instructions to FCC Form 318, Section IV at 9; *Sixth Report and Order*, 27 FCC Rcd at 15475.

³³ 47 C.F.R. § 73.853(b); FCC Form 318, Section IV, Question 1 (requiring applicants to provide the date on which the applicant qualified as local).

³⁴ 47 C.F.R. § 73.872(d)(2). If there are only two tied, grantable applications, the applicants must select between the following 12-hour time slots: 3 a.m.-2:59 p.m., or 3 p.m.-2:59 a.m. If there are three, tied, grantable applications, each applicant must rank their preference for the following 8-hour time slots: 2 a.m.-9:59 a.m., 10 a.m.-5:59 p.m., and 6 p.m.-1:59 a.m. The Commission will award time in units as small as four hours per day. In the event an applicant neglects to designate its preferred time slots, FCC staff will select a time slot for the applicant.

³⁵ 47 C.F.R. § 73.872(d)(3) and (d)(2); *see also Sixth Report and Order*, 27 FCC Rcd at 15475.

³⁶ All applicants listed in this Public Notice, whether or not a tentative selectee, are permitted to file major change amendments during this period.

³⁷ 47 C.F.R. § 73.871. This limited waiver policy will allow applicants to use all available FM channels to resolve technical conflicts, eliminate ties, and obtain construction permits.

³⁸ The Bureau will process and review the major change amendments in the order that they are filed on a daily basis. If the first-filed amendment is acceptable, the Bureau will return all subsequently-filed conflicting amendments, giving the second-filed applicant the opportunity to pursue other options, including settlements, other major amendments, and minor amendments, to remove application conflicts. All amendments filed on December 24,

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Applicants filing technical amendments should carefully consider all legal, *e.g.*, maintaining eligibility as a “local” applicant,³⁹ and technical requirements. Amendments may not create any new application conflicts and must specify rule-compliant facilities.⁴⁰ Major amendments will only be allowed during this 90-day period.⁴¹ Applicants may continue to file minor amendments⁴² and non-point aggregation settlement agreements⁴³ at any time.

Acceptability Studies and Filing of Petitions. The Media Bureau staff has examined the applications of each tentative selectee for application defects.⁴⁴ With the exceptions noted below, each tentative selectee identified in this Public Notice appears to be technically and legally qualified to become the licensee of the new LPFM station it has proposed.⁴⁵ Accordingly, the applications of the tentative selectees are accepted for filing.⁴⁶ This triggers a 30-day period from release of the Public Notice for the filing of petitions to deny.

Any argument that a tentatively selected application should not be granted must be raised in such a petition, even if the objection relates only indirectly to the tentative selectee’s comparative points. For

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2014, must be protected by any amendment filed after December 24, 2014. Amendments filed on weekends or holidays are considered to be filed the next business day. *See* 47 C.F.R. § 1.4.

³⁹ *See* 47 C.F.R. 73.853(b).

⁴⁰ Amendments may, however, request waivers of the second-adjacent channel spacing requirements. *See* 47 C.F.R. § 73.807. Such amendments must include a showing that the proposed facilities will not result in interference to any authorized radio service. *See* 47 C.F.R. § 73.807(e)(1).

⁴¹ Simultaneously with the release of this Notice, CDBS is being modified to permit the electronic filing of such major change amendments. Applicants can monitor competing applications for any developments in CDBS.

⁴² Minor amendments include: (1) site relocations of 5.6 kilometers or less; (2) channel changes of no more than +/- three channels or to an intermediate frequency (+/- 53 or 54) channel; (3) partial and universal voluntary time-sharing agreements; (4) changes in general or legal information; and (5) changes in ownership where the original parties retain more than 50 percent ownership in the application as originally filed. Site relocation amendments of more than 5.6 kilometers will be permitted to remediate potential third-adjacent channel interference and for time-share proponents to relocate to a common transmitter site. *See* 47 C.F.R. § 73.871(c).

⁴³ The settlement agreement must comply with the pertinent requirements of Section 73.3525 of the Commission’s Rules. 47 C.F.R. § 73.3525; *see also Procedures Notice*, 28 FCC Rcd at 16367 (describing settlement agreement requirements). Settlement agreements should be electronically filed through CDBS as minor amendments to the subject applications.

⁴⁴ The staff has made no “acceptability” determination regarding the applications that received fewer than the highest point total in each mutually exclusive group.

⁴⁵ As noted in “Notes” section of Attachment A, three of the MX applications listed in this Public Notice are currently in non-final dismissed status or, in the case of the two non-priority public safety applications discussed in note 24 above, will be dismissed upon release of this Public Notice. *See* MX Group 3, File No. BNPL-20131114AGO; MX Group 89, File No. BNPL-20131021ABI; and MX Group 364, File No. BNPL-20131113ACA. In each case, the application was dismissed for a technical or legal defect, or based on the election of each public safety applicant that had filed multiple applications. With the exception of these non-priority public safety applicants, each applicant has filed a petition for reconsideration, which remains pending or, its application was dismissed within the past 30 days. In the case of one of these applications, the applicant is tied for the highest points in its MX Group and identified as a tentative selectee. In the event the petition for reconsideration is granted and the application reinstated, the application will be accepted for filing at that time.

⁴⁶ *See* 47 C.F.R. § 73.870(d). With the exceptions noted above, the applications, which are printed in **bold** in Attachment A, are accepted for filing.

example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's must make its argument in a petition to deny. Parties may not file petitions for reconsideration because the point and tentative selectee determinations do not constitute "final" actions, and petitions for reconsideration do not lie against such interlocutory decisions.⁴⁷ Petitions to deny must be filed in accordance with the procedures set forth in Section 73.3584 of the Rules.⁴⁸

Attachment B – Second-Adjacent Waiver Requests. Many of the tentatively-selected applicants identified in this Public Notice included a request for a waiver of the second-adjacent channel spacing requirements set forth in Section 73.807 of the Rules.⁴⁹ In the *Sixth Report and Order* we directed the Media Bureau to specifically identify all potentially affected second-adjacent channel stations in the Public Notice that accepts for filing an LPFM application that includes a second-adjacent channel waiver request.⁵⁰ Accordingly, we identify these applications and respective stations in Attachment B.

Forthcoming Staff Action. We direct the staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with the Bureau's routine processing procedures. In the case of tied applications, the final study will not be conducted until the tie has been eliminated through amendment, settlement and/or time-share procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected applications would serve the public interest. If no such question exists, we direct the staff to grant the application(s) on the basis of the point system determinations and dismiss all competing applications.

With the exception of applications that present issues that are new or novel or require Commission or Administrative Law Judge consideration by statute or rules, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission Rules and policies.⁵¹ The staff need not refer such matters to the Commission or designate such matters for hearing before an Administrative Law Judge unless the issues are new or novel, or raise a substantial and material question of fact regarding the award of points. Generally, the staff should refer only those issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular LPFM group, or where there is a new or novel issue. In cases that present a substantial and material question of fact, the staff should designate the issue for hearing before an Administrative Law Judge.

⁴⁷ An interlocutory action is non-final, one that neither denies nor dismisses an application nor terminates an applicant's right to participate in the proceeding. See 47 C.F.R. § 1.106 (a)(1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007); *Harry F. Cole, Esq.*, Letter, 27 FCC Rcd 9295 (MB 2012).

⁴⁸ 47 C.F.R. § 73.3584. An applicant may file an opposition, and the petitioner may file a reply, within the times prescribed by the rules.

⁴⁹ 47 C.F.R. § 73.807(e)(1). A waiver applicant must demonstrate that its proposed operations will not result in interference to any authorized radio service.

⁵⁰ *Sixth Report and Order*, 27 FCC Rcd at 15429.

⁵¹ See, e.g., *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

Severance for Purposes of Petitions, Appeals and Finality. Each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission’s own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision with respect to any other group included herein.

Additional Information. For additional information, please contact:

- Electronic filing assistance: Konrad Herling or David Trout, (202) 418-2662
- Legal inquiries: Tom Hutton or Alex Sanjenis, (202) 418-2700
- Engineering inquiries: James Bradshaw or Gary Loehrs, (202) 418-2700
- Press inquiries: Janice Wise, (202) 418-8165

Action by the Commission December 22, 2014: By Chairman Wheeler, and Commissioners Clyburn, Rosenworcel, Pai and O’Rielly.

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