



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 18-332
April 3, 2018

SETTLEMENT PERIOD ANNOUNCED FOR CROSS-SERVICE FM TRANSLATOR MUTUALLY EXCLUSIVE APPLICATIONS FOR AUCTION 100

Technical Amendments and Settlement Agreements Due by June 14, 2018

1. Today, the Media Bureau and Wireless Telecommunications Bureau identify all proposals for new FM translators filed in the January 25–January 31, 2018, filing window (Auction 100) 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 begin immediately and end on June 14, 2018 (settlement period). Parties seeking to resolve mutual exclusivities must file a technical resolution amendment or a joint request for approval of their settlement agreement between May 24–June 14, 2018 (settlement filing window), and otherwise comply with the terms of this public notice.

2. **MX Groups.** Attachment A to this Public Notice lists all pending mutually exclusive (MX) FM translator engineering proposals filed in the Auction 100 FM translator 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 the Auction 100 window on the January 31, 2018, deadline for the filing of FCC Forms 175.⁴ The Commission's rules provide for a limited opportunity to settle, or otherwise resolve mutual

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 December 4, 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 Second Cross-Service FM Translator Auction Filing Window for AM Broadcasters (Auction 100) to be Open January 25 – January 31, 2018*, Public Notice, 32 FCC Rcd 10173 (MB/WTB 2017).

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).

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 ends, 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 during the settlement filing window an amended FCC Form 349 Section I, the Tech Box of Section III-A, and the Section VI Certification.⁷ 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.⁸ A technical resolution amendment must be a “minor” change, as defined by the rules,⁹ 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.¹⁰

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,¹¹ and the pertinent requirements of Section 73.3525 of the Commission’s rules, including, *inter alia*, reimbursement restrictions.¹² 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.¹³ During the settlement filing window, 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,¹⁴ and any

⁵ See *id.* § 73.5002(d).

⁶ Thus, an Auction 100 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 This does not preclude the submission of necessary explanatory technical exhibits in addition to the required portions of Form 349.

⁸ See 47 CFR § 73.5002(e).

⁹ See *id.* § 74.1233(a).

¹⁰ See *infra* note 14.

¹¹ 47 U.S.C. § 311(c).

¹² 47 CFR § 73.3525.

¹³ See *id.* § 73.5002(e).

¹⁴ 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.

necessary amendment(s) to their FCC Form 349 Section III-A Tech Box(es). The staff will ultimately request complete FCC Form 349 applications from the surviving applicant(s) upon approval of the settlement agreement.¹⁵

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 its dismissal request.¹⁶

7. ***Filing Procedures for Technical Resolution Amendments.*** An applicant filing a technical resolution amendment must submit, during the settlement filing window, 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 100" 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 100 initial filing window must be entered on the Pre-form in the field "Eng. Proposal File Number."¹⁷ 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/cdbs/forms/prod/cdbs Ug.htm>. Applicants are **strongly encouraged** to submit technical resolution amendments **before** the last day of the settlement filing window. Filing earlier in the window allows an applicant to correct any problem that may inadvertently have been caused by the amendment, such as a conflict with a previously filed technical resolution amendment, or allows an applicant to supplement an amended proposal that does not properly eliminate mutual exclusivity. After the end of the settlement filing window, Auction 100 applicants will not be permitted to file additional amendments to their engineering proposals, even if their amended proposals as filed fail to completely remove mutual exclusivity with all other applications.

8. ***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 June 14, 2018**, with the Commission's Secretary, Marlene Dortch. Filings must be addressed to the Office of the Secretary, Federal Communications 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.

¹⁵ 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.

¹⁶ 47 CFR § 73.3525(c).

¹⁷ The CDBS file number issued to the Form 349 Section I and Section III-A Tech Box filed in the Auction 100 filing window is listed in Attachment A to this Public Notice.

9. 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-A302, Washington, DC 20554.

10. All FCC Form 349 submissions filed during the Auction 100 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.

11. **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.

12. 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

–FCC–