



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

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DA 07-4571

Released: November 8, 2007

## Window Opened to Expedite Grant of New NCE FM Station Construction Permits; Bureau Will Accept Settlements and Technical Amendments

By this Public Notice, the Media Bureau (the "Bureau") announces a 60-day period beginning with the release of this Public Notice and ending January 7, 2008, for applicants to enter into and file settlement agreements and to submit technical amendments to expedite the grant of applications filed in the recent noncommercial educational ("NCE") FM window. 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 applications filed in the window. Settlement agreements and technical amendments that are filed by January 7, 2008, and that satisfy all the requirements set forth below, will receive expedited processing.<sup>1</sup>

The first filing window for FM reserved band (channels 201 - 220) applications for NCE FM new station and major change applications closed on October 22, 2007.<sup>2</sup> Simultaneously with the release of this Public Notice, the Bureau will be: (1) accepting for filing rule-compliant applications that are not mutually exclusive with any other applications submitted in the filing window (the "Singletons")<sup>3</sup>; (2) dismissing patently defective applications; and (3) making publicly available all applications and amendments filed during the recent window. At this time it is the responsibility of the applicants to identify mutually exclusive proposals.<sup>4</sup>

**Settlement Agreements.** Applicants may resolve technical conflicts through two methods: settlements and/or technical amendments. 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

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<sup>1</sup> Although the Commission's Rules permit parties to settle at any time (*see* 47 C.F.R. § 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.

<sup>2</sup> The filing window opened on Friday, October 12, 2007. *See Media Bureau Announces NCE FM New Station and Major Modification Application Filing Window for New and Certain Pending Proposals; Window to Open on October 12, 2007*, Public Notice, 22 FCC Rcd 2726 (2007); *Media Bureau to Extend Window for NCE FM New Station and Major Change Applications; Window Will Close on October 22, 2007*, Public Notice, DA 07-4355 (October 19, 2007).

<sup>3</sup> The acceptance for filing of these singletons will start the 30-day period for filing petitions to deny. *See* 47 C.F.R. § 73.7004.

<sup>4</sup> At a later date, following the current settlement window, the Bureau will release a public notice identifying the remaining mutually exclusive groups of applications.

conflicts.<sup>5</sup> If a settlement involves more than one group, the Bureau will expeditiously process the settlement request only if each group satisfies the requirements set forth in this Public Notice. For example, we will not accept a settlement in which an applicant promises to withdraw from one proceeding in return for the promise of a competing applicant to withdraw from another proceeding, unless the proposed dismissals result in grantable singleton applications in each group.<sup>6</sup> Universal settlements are encouraged but not required.<sup>7</sup>

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 the reimbursement restrictions.<sup>8</sup> Specifically, parties must file with the FCC:

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 it is considered that 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 other consideration in excess of the legitimate and prudent expenses of the applicant;<sup>9</sup>
  - (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.<sup>10</sup>

An applicant that unilaterally dismisses its application without having entered into a settlement agreement with another applicant must nevertheless still submit an affidavit stating whether consideration has been promised to or received by such applicant in connection with its dismissal.<sup>11</sup> A request for dismissal of an

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<sup>5</sup> 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 thirty (30) days of this subsequent Public Notice.

<sup>6</sup> See, e.g., *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074 at ¶ 98 (2001).

<sup>7</sup> Universal settlements resolve the claims of all applications within a mutually exclusive group.

<sup>8</sup> 47 C.F.R. § 73.3525.

<sup>9</sup> "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 C.F.R. § 73.3525(i).

<sup>10</sup> See 47 C.F.R. § 73.3525(a). Affidavits shall be executed by the applicant, permittee, or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association. See 47 C.F.R. § 73.3525(f).

<sup>11</sup> See 47 C.F.R. §§ 73.3525(c) and 73.3568.

application cannot cure a violation of the ten-application limit on NCE FM new station applications filed by any party during the window. As explained in the Bureau's recent Public Notice, if it is determined that any party to an application has an attributable interest in more than ten applications, we will retain the ten applications that were filed first – based on application file number – and dismiss all other applications.<sup>12</sup>

Finally, applicants are reminded that the Section 307(b)<sup>13</sup> fair distribution factors remain relevant, and a proposed settlement cannot impede the achievement of a fair, efficient, and equitable distribution of radio service.<sup>14</sup>

**Technical Amendments.** Acceptable technical amendments will resolve all conflicts between at least one application and all other applications filed in the window. Only “minor” engineering amendments, *e.g.*, amendments specifying an adjacent channel, a new transmitter site, lower power, modified directional pattern, etc., will be accepted.<sup>15</sup> Amended applications must specify rule-compliant facilities. Amendments which create any new application conflicts will be returned. 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 the NCE first-come, first-served cut-off rule.<sup>16</sup>

Applicants filing coordinated technical amendments as part of a settlement agreement must cross-reference all such filings in each amendment. As noted previously, an applicant that unilaterally files an engineering amendment to procure the removal of conflicts with 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.<sup>17</sup>

**Filing Procedures.** Joint requests for approval of a settlement must be filed in original and two copies, plus one copy for each party to the settlement, on or before January 7, 2008, with the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition, applicants are encouraged to deliver a courtesy copy of

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<sup>12</sup> See *FCC Adopts Limit for NCE FM New Station Applications in October 12 – October 19, 2007 Window*, Public Notice, FCC 07-179, MM Docket No. 95-31 (October 10, 2007).

<sup>13</sup> 47 U.S.C. § 307(b).

<sup>14</sup> If we find that a proposed dismissal will impede the Section 307(b) objectives, we may require republication of local public notice in the community of the dismissing application and order that further opportunity be afforded for other persons to apply for the facilities specified in the application before acting upon the request for approval of the settlement. See 47 C.F.R. § 73.3525(b). We direct applicants to our recent procedures Public Notice for a discussion of our fair distribution analysis. See *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12 – October 19, 2007 Window; Limited Application Filing Freeze to Commence on September 8, 2007*, Public Notice, DA 07-3521 (August 9, 2007); see also *Mass Media Bureau Provides Examples of Application of NCE Section 307(b) Criteria*, Public Notice, 16 FCC Rcd 10892 (MMB 2001).

<sup>15</sup> See 47 C.F.R. § 73.3573.

<sup>16</sup> See 47 C.F.R. § 73.3573(e).

<sup>17</sup> See 47 C.F.R. § 73.3525(c).

the settlement agreement to Liz Robinson, Audio Division, Media Bureau, Room 2-B450, 445 12th Street, S.W., Washington, DC 20554. Applicants should reference any application amendments filed in conjunction with each joint request. The Bureau will expedite the processing of all complete and rule-compliant settlement agreements and technical amendments.

All application amendments must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic filing system, located at the following site:  
<http://www.fcc.gov/mb/elecfile.html>.<sup>18</sup>

For additional information, contact:

Electronic filing assistance: Konrad Herling or David Trout, (202) 418-2662

Legal inquiries: Irene Bleiweiss, Amy Van de Kerckhove, or Peter H. Doyle, (202) 418-2700

Engineering inquiries: James Bradshaw or Rudy Bonacci, (202) 418-2700

By: Chief, Media Bureau

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<sup>18</sup> Amendments will not be accepted on paper or via email.