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January 19, 2007 is Effective Date For FCC's City of License Change By Application Rules

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To: All Broadcast Clients
From: John Garziglia

The FCC's new radio station city of license change rules, informally known as "Allocations Streamlining," will be effective on January 19, 2007 as a result of being published in the Federal Register. On that same date, the Commission is lifting its freeze on the filing of new petitions for allocation rulemaking, a freeze that has been in place for almost one and one-half years.

The most important rule change made is that city of license changes for both AM and FM stations, commercial and non-commercial (but excluding expanded band AM stations) may now be obtained through the filing of a minor change application. This is to be contrasted with the previous city of license change process where, for FM stations, a paper intensive petition for rulemaking process had to be used, and for AM stations such changes could only be applied for during FCC-specified windows.

It is expected that a great number of applications for radio station city of license changes will be filed on the effective date of this rule change. This has two ramifications for existing radio broadcasters. If a broadcaster is contemplating a city of license change, now is the time to take steps to be ready to file on January 19, 2007 when the rule becomes effective, as earlier filed applications will have an absolute priority over any later-filed conflicting applications. (All applications filed on the same day are deemed to have equal priority.) Additionally, even if a broadcaster is contemplating only a transmitter site change that is acceptable under the existing rules, any one of the expected flood of applications might possibly conflict. Therefore, broadcasters who are contemplating changes that may be filed now are advised to proceed with such applications prior to the effective date of the new rules.

A change made to the rules that will not have a substantive effect on broadcasters is that petitioners seeking a new FM allotment must now file a complete FCC Form 301 along with a several thousand dollar FCC filing fee at the same time that the petition for rulemaking or counterproposal is filed. Previously, the only cost to someone requesting a new FM allotment was the cost of preparation and postage. There have been instances of a single individual filing for hundreds of new allotments across the United States, yet when these same allotments came up for auction, that individual did not seek any of the allocations that it previously had requested. This may be a case of the Commission making a change that should have been made years ago.

Nonetheless, this new requirement should help ensure that new allotment petitions for rulemaking and counterproposals are filed only by one who has a real interest in the allotment. As an aside, this new procedure should also stop the somewhat scurrilous practice of filing for a new allotment using only a fictitious name without identifying the individuals behind the allotment request. Now that an FCC Form 301 must be filed for a new allotment, identifying information must be made public at the time the allotment is requested.

Another change is that petitions and other comments filed in allocation rulemaking proceeding may now be submitted electronically through the Commission's ECFS electronic filing system. Previously, all allocation filings had to be submitted on paper with the result that it was often weeks before participants in a particular docket knew what was filed by others. As electronic filing is not mandated, however, this does not remove the possibility that pleadings will still be filed on paper with consequent delays in those pleadings being entered into the Commission's database systems.

A rule change not adopted was a proposal to loosen the restriction on changing the city of license for the sole radio station licensed to a particular community. The Commission's present policy of only entertaining such city of license changes in the most extreme circumstances will continue, which means it will remain nearly impossible to move an operating, existing station from a community to which it is the only radio station licensed.

Under the new rules, up to four contingent applications may be filed to upgrade or to seek city of license changes. This limit of four is an unexpected by-product of the new rules. Previously, using petition for rule making procedures, there was no legal limit on the number of moves and changes that could be requested, provided that consent was obtained from all but two of the stations being moved or otherwise being changed. Now, since moves and upgrades of existing stations must be filed using the new application procedures, the already existing limit of four contingent applications imposes a largely unwelcome limit on many move/upgrade scenarios. Notably, however, changes in reference coordinates, presumably for both vacant allotments and for authorized facilities, are not counted against the four station limit on contingent applications.

In addition, the Commission has stated that where a station, as part of a contingent application group, is being moved to a non-adjacent channel, that move must also be accomplished through an application rather than through a petition for rulemaking process. This could be a significant benefit to some city of license change or upgrade scenarios where previously the fact that a station was being moved to a vacant allotment could have engendered a blocking counterproposal. Now, filings are protected against any conflicting proposals filed at a later date.

Even if you are not contemplating any immediate moves or upgrades, you may be approached by a third party seeking your consent to a change in your station's facilities in exchange for a payment. Such an offer should be evaluated carefully on both an engineering and a legal basis. If someone approaches you about a consensual change to your station's facilities, the chance is that the requested move is part of a puzzle of moves that has the potential to significantly increase the value of one or more stations.

Whether you are contemplating an arrangement by which your station may be moved or upgraded using the Commission's new rules, or whether you are approached by another to obtain your consent to a change in your station's facilities, we are prepared to assist you with the project. We look forward to hearing from you.

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