



**Federal Communications Commission
Washington, D.C. 20554**

October 20, 2014

In Reply Refer to:
1800B3-PPD

Ms. Michelle Bradley
REC Networks
11541 Riverton Wharf Road
Mardela Springs, MD 21837

The Church in Anaheim
2528 West La Palma Avenue
Anaheim, CA 92801

Long Beach Community Television
and Media Corporation
1906 East Anaheim Street
Long Beach, CA 90813

Glendale Humane Society
717 W. Ivy Street
Glendale, CA 91204

Historic Downtown Los Angeles
Business Improvement District
453 South Spring Street
Suite 1116
Los Angeles, CA 90013

Edgewood High School
1301 Trojan Way
West Covina, CA 91790

**In Re: Application for Construction Permit
for a Low Power FM Broadcast
Station**

New-LP, Anaheim, CA
Facility ID Number: 195397
The Church in Anaheim
File Number: BNPL-20131108ADF

New-LP, Long Beach, CA
Facility ID Number: 195312
Long Beach Community Television and
Media Corporation
File Number: BNPL-20131112BDU

New-LP, Glendale, CA
Facility ID Number: 193636
Glendale Humane Society
File Number: BNPL-20131112BLD

New-LP, Los Angeles, CA
Facility ID Number: 196909
Historic Downtown Los Angeles
Business Improvement District
File Number: BNPL-20131114BGG

New-LP, West Covina, CA
Facility ID Number: 197426
Edgewood High School
File Number: BNPL-20131115AAB

Dear Ms. Bradley and Applicants:

This letter concerns Ms. Bradley's e-mail to Chairman Tom Wheeler, Commissioners Mignon Clyburn, Jessica Rosenworcel, Ajit Pai, and Michael O'Rielly, and Media Bureau staff Tom Hutton and Parul P. Desai dated October 9, 2014 ("October E-mail"). We have determined that the October E-mail was an improper *ex parte* presentation and admonish Ms. Bradley, The Church in Anaheim, Long Beach Community Television and Media Corporation, Glendale Humane Society, Historic Downtown Los Angeles Business Improvement District, and Edgewood High School (collectively, "Applicants") for their violation of the *ex parte* provisions of the Commission's rules ("Rules").

Background. On July 9, 2014, the Commission released a Public Notice identifying tentative selectees in 79 groups of mutually exclusive ("MX") applications filed in the October 2013, low power FM window.¹ The Applicants are part of MX Group 27, which was included in the *July PN*. The Commission gave the MX groups with multiple tentative selectees, such as MX Group 27, the option of aggregating comparative points and proposing a time-share agreement for the use of the frequency.² The Commission stated that the time-share proposals were to be submitted "within 90-days of the release of [the *July PN*]."³ Because the *July PN* was released on July 9, 2014, time-share proposals were due by October 7, 2014.

The *July PN* also established a deadline for MX applicants to file major amendments to remove technical conflicts among the MX applicants.⁴ The Commission stated: "Starting July 10, 2014, at 12:01 a.m. EDT, the first business day after the date of release of [the *July PN*], we open a 90-day period to permit the MX applicants ...to file major amendments.... This 90-day period for filing major change amendments ends October 8, 2014, at 6:00 p.m. EDT."⁵ Notwithstanding specific guidance to the contrary, Ms. Bradley and the Applicants erroneously concluded that the October 8, 2014, deadline applied to time-share agreements. Accordingly, Applicants submitted their time-share proposals on October 8, 2014, rather than October 7, 2014.

¹ See *FCC Names Tentative Selectees of Mutually Exclusive LPFM Applications*, Public Notice, 29 FCC Red 8665 (MB 2014) ("*July PN*").

² *Id.* at 8670.

³ *Id.*

⁴ *Id.* at 8671.

⁵ *Id.*

Subsequently, on October 9, 2014, Ms. Bradley sent the October E-mail seeking an extension of the October 7, 2014, deadline for time-share proposals.⁶ Ms. Bradley believed the *July PN* caused confusion among some applicants. Moreover, according to Ms. Bradley, an extension was warranted because, “there were 12 amendments for aggregation agreements impacting Los Angeles, Portland, Vallejo and Omaha” that were filed on October 8.⁷ Ms. Bradley did not serve the October E-mail on competing applicants.

Discussion. The purpose of the Commission’s *ex parte* rules is to ensure that the Commission’s decisions are fair and impartial and based on a public record free of influence from non-record communications between decision-makers and outside persons.⁸ Consequently, *ex parte* presentations are prohibited in restricted proceedings, which include proceedings involving mutually exclusive applications.⁹ This prohibition applies to any presentation “directed to the merits or outcome of a proceeding,” including compliance with procedural requirements, made to or from decision-making personnel.¹⁰ *Ex parte* presentations include e-mail communications not served on other parties.¹¹

The Applicants, represented by Ms. Bradley, are involved in a restricted proceeding because they all have pending MX applications with other applicants in MX Group 27.¹² The October E-mail is a presentation under the Rules because Ms. Bradley’s communication disputes the filing date for time-share proposals,¹³ and the October E-mail was addressed to officials with the authority to rule on the procedural issue raised by Ms. Bradley. Thus, the October E-mail did not comply with *ex parte* requirements applicable to this restricted proceeding.¹⁴

Conclusion. Accordingly, IT IS ORDERED that Michelle Bradley, The Church in Anaheim, Long Beach Community Television and Media Corporation, Glendale Humane Society, Historic Downtown Los Angeles Business Improvement District, and Edgewood High School are HEREBY ADMONISHED for their violation of 47 C.F.R. § 1.1208. We caution Michelle Bradley, The Church in Anaheim, Long Beach Community Television and Media Corporation, Glendale Humane Society, Historic Downtown Los Angeles Business Improvement District, and Edgewood High School to be and remain more diligent in the future regarding compliance with the Rules.

⁶ See Attachment A.

⁷ October E-mail.

⁸ See 47 C.F.R. § 1.1200; *Ex Parte Communications*, Report and Order, 2 FCC Rcd 3011, 3012 (1987).

⁹ 47 C.F.R. § 1.1208.

¹⁰ 47 C.F.R. §§ 1.1202(a), 1.1208.

¹¹ 47 C.F.R. §§ 1.1202(b) and note to paragraph (b), 1.1208.

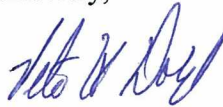
¹² Staff has attempted to identify all affected MX applicants that should have been served with the October E-mail, including applicants in MX groups in which Ms. Bradley served as a consultant to one or more applicants. Staff was able to only identify MX Group 27 as including applicants represented by Ms. Bradley and will serve the October E-mail to the applicants in MX Group 27 listed in Attachment B. We direct Ms. Bradley to serve the October E-mail on any other affected applicants in other MX groups that the staff was not able to identify, including the MX applicants in Portland, Oregon; Vallejo, California; and Omaha, Nebraska that were alluded to in the October E-mail.

¹³ 47 C.F.R. § 1.1202(a) (although the rule allows for presentations regarding noncontroversial procedural requirements, Ms. Bradley’s October E-mail brought those requirements into controversy).

¹⁴ To ensure fairness, the Commission ultimately extended the deadline for time-share proposals from October 7, 2014 to October 8, 2014, 6 p.m. EDT. See *Media Bureau Extends The Filing Date For Time-Shares Submitted In Response To The July 9, 2014, Public Notice Identifying Tentative Selectees In 79 Groups Of Mutually Exclusive Applications*, Public Notice, DA 14-1513 (October 20, 2014). Nonetheless, this admonishment is required because it is imperative that parties adhere to the Commission’s *ex parte* requirements.

IT IS FURTHER ORDERED that Michelle Bradley will serve the October E-mail on any affected MX applicant not listed in Attachment B as discussed in footnote 12.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

**ATTACHMENT A
OCTOBER E-MAIL**

Parul Desai

From: Michi Eyre <mae@recnet.com>
Sent: Thursday, October 09, 2014 10:35 PM
To: Parul Desai; Tom Hutton; Tom Wheeler; Mignon Clyburn; Jessica Rosenworcel; Ajit Pai; Mike O'Reilly
Subject: Low Power FM MX Filing Window inconsistency

Parul, Tom and Commissioners:

I am writing to inquire about the deadlines for the first Low Power FM Mutually Exclusive (MX) settlement (aggregation time-share) and major change window that just took place (FCC 14-96).

I am hearing two different answers for the deadlines. I am hearing from some who feel that the deadline was October 8 at 6PM for all filings (aggregation and major change). I am hearing others who are saying that there were actually two deadlines: October 7 at 11:59 PM for aggregation agreements and October 8 at 6:00 PM for major change amendments.

If the latter is correct, I have some serious issues here.

When the FCC created LPFM under William Kennard, it was intended as a "people's" radio service. LPFM was originally designed so the average person with not much broadcast knowledge and the legal or engineering resources could file an application. When LPFM first came out, you could still file on paper.

If you review the public notice in question, it states on the first page:
"... and a 90-day period for the filing of voluntary time-share proposals (point-aggregation requests) and major change amendments."

There is no indication that the deadlines are different. The average (non-attorney) would read this and see that there is a 90 day period. As we move forward to page 6, we see that voluntary time-sharing/point aggregation may.. "propose to share use of the frequency by filing, within 90-days of the release of this public notice, a time share proposal."

Me, the non-attorney is thinking, OK.. 90 days.

Then I read on page 7 the part about the major amendments where it states.. "This 90-day period for filing major change amendments ends October 8, 2014 at 6:00 PM EDT."

OK.. so now that is my 90 days! Or is it?

The fact here is that because of how this public notice was written, there were 12 amendments for aggregation agreements impacting Los Angeles, Portland, Vallejo and Omaha. Most of them came from non-attorneys.

These are filings by people who do not possess law degrees and have do not have legal calendars or applications that immediately show the deadlines. They also don't count out the days on the calendar to determine what is really 90 days away (especially considering that some months have 30 or 31 days). They depend on the public notices for those dates and the only date that they see is October 8, 2014 at 6:00PM EDT and as a result, people filed based on that information.

I am asking the Media Bureau legal staff and the Commission, are we going to accept those filings that were made on October 8 prior to 6PM EDT based on the wording of the public notice or was there really two deadlines. In 2007, the Commission recognized that LPFM applicants were small organizations with limited resources and limited access to professional engineers thus justifying the need to extend the MX settlement period to 90-days. (22 FCC Rcd 21912 para. 27). 7 years later, this is still the case.

I am asking first what was the deadline for these aggregation agreements that the Commission was planning on? (end of day October 7 or 6:00PM October 8). If it was end-of-day October 7, then I am asking, based on the information that I presented that the Commission grant a blanket waiver of §73.872(c) to extend the deadline of this filing window for a period of 18 hours to October 8, 2014 at 6:00PM EDT in order to be consistent with the date on the public notice. The date that is otherwise considered as the "90-day" period. Such a request will assure a full and complete record in the impacted MX groups and therefore would be in the public interest. (I feel that this simple request meets the requirements of §1.925(b)(3)(ii) due to the unique factual circumstances of the instant case that inequitable [as it impacts non-attorneys], is unduly burdensome [due to two deadlines and no specific disclosure of such based on the wording of the public notice -references to '90 days' and equating that to a date and time written in the notice.] and contrary to the public interest [assures that all citizens/consumers have access to FCC benefits].

I would also suggest that as we move forward with LPFM, public notices should be clear with the dates (similar to rulemaking proceedings) and if there are two different dates or times, this should be disclosed. Where it comes to LPFM, it is more likely that a member of the general public and not a licensed attorney will be filing and they are more likely to look for a date on a notice and not manually count days on a calendar.

Thank you very much for your time and consideration.

If you have any questions, please call me at
323-431-1015 or on my cell phone: 415 407-6221

Michelle Bradley
founder: REC Networks
=m

**ATTACHMENT B
MX GROUP 27 SERVICE LIST**

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The Emperor's Circle of Shen Yun
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