Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Extension of the Filing Date for Time-Shares Submitted	)	DA 14-1513
in Response to the July 9, 2014, Public Notice	)	
Identifying Tentative Selectee in 79 Groups of	)	
Mutually Exclusive LPFM Applications	)	

TO: The Secretary
ATTN: Chief, Audio Division
Media Bureau

PETITION FOR RECONSIDERATION

Future Roots, Inc. ("FRI"), by counsel and pursuant to §1.106 of the Commission's rules, hereby petitions the Commission to reconsider certain provisions of the Media Bureau's order announced in its Public Notice dated October 20, 2014, retroactively extending the filing deadline for time-share agreements among tentative selectees in groups of mutually exclusive LPFM applicants.[1] FRI has an LPFM application pending before the Commission,[2] was named as a tentative selectee in MX Group 27,[3] and is a party to a time-share agreement filed with the Commission on October 7, 2014.

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[1] *Media Bureau Extends the Filing Deadline 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 (MB, rel. October 20, 2014) (the "October PN").

[2] File No. BNPL-20131114BDZ.

[3] *See, Commission Identifies Tentative Selectees in 79 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,* Public Notice, Attachment A, 29 FCC Rcd 8665 (2014) (the "July PN").

The primary focus of the October PN was to address confusion claimed by some applicants about the filing deadline for these agreements that arose from the instructions given by the Bureau in the July PN. In addition to that, the October PN also stated for the first time in Footnote 6 that a time-share agreement would be acceptable if filed as an amendment to the application of just one applicant party to the agreement. FRI asserts that both of these elements of the October PN are improper retroactive changes in the Commission's previously announced processing procedures that are unfair and prejudicial to certain parties, including FRI. FRI respectfully requests that these provisions be reconsidered and rescinded or modified.

Filing Date Extension

The July PN established filing deadlines for two separate and completely different types of filings to be submitted by two separate and completely different groups of applicants. On page 6, the Commission stated that "Any two or more tied applicants in each MX Group may may propose to share use of the frequency by filing, ***within 90-days of the release of this Public Notice***, a time-share proposal." (Emphasis added.) The July PN was released on July 9, 2014. Simple math indicates that a deadline falling 90 days later should be on October 7, 2014. There is nothing in these instructions that is confusing or controversial.

The other category of filings concerned major amendments to the applications of applicants who were not named as tentative selectees. On page 7 of the July PN, the Commission stated:

> Major Amendments. Starting July 10, 2014, at 12:01 a.m. EDT, 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, ... This 90-day period for filing major change amendments ends October 8, 2014, at 6:00 p.m. EDT.

In this paragraph, it appears that the Commission made an error in its calculations. A 90-day period that begins counting with day #1 on July 10 would conclude on October 7. This is obvious from the straight-forward reading of the PN. Anyone who was confused about this apparent inconsistency should have consulted with Commission staff for clarification ***in advance of the deadline.***

The confusion to which the Bureau alludes in the October PN should not be relevant to questions of compliance with the deadline for filing time-share agreements. Instructions for that task were unambiguous. It was the instructions for the major amendment deadline that may have caused confusion – but those instructions did not give any indication whatsoever that they pertained to the deadline for time-share agreements. There was no cause to be confused about the time-share deadline and the Bureau's concern about the potential for such confusion is misplaced.

The Bureau's action in the October PN to retroactively postpone the filing deadline is grossly prejudicial to applicants who timely negotiated, prepared and filed their time-share agreements by the required October 7 deadline. If they had known that they could have another day, they may have been able to conclude better agreements with more parties, perhaps giving their time-share group a more advantageous competitive position. Parties who waited until October 8 to file received the benefit of that extra day with no apparent detriment. Applicants who thought the Commission's instructions were confusing and who nonetheless waited until October 8 to file their agreements did so at their own peril. They should not now be rescued by adjustments to the deadlines after the fact that were not available to all parties. The Commission certainly has the discretion to change deadlines in advance. However, post-hoc rescheduling of

filing deadlines that are critical to comparative analysis for competing applicants as happened here is anathema. The Bureau states that it extended the deadline "To ensure fairness in the processing of time-share proposals, . . ."[4] In fact, the Bureau's action ensured that the process would be *unfair*. Applicants who filed on time did not obtain the advantage of the extra day accorded to others who filed after the originally announced deadline. This action represents a departure from the Commission's long-established policy to adhere to strict deadlines for submissions in comparative proceedings. As the Bureau noted in its denial of similar requests for waivers of a filing deadline, "The Commission has repeatedly disallowed the late submission of requested information in comparative cases, finding that such an allowance would 'inevitably lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage.'"[5]

Allowing this retroactive extension of the filing deadline for share-time agreements would be a gross miscarriage of justice. The Bureau should reverse its decision.

Amendments to Time-Sharing Applications

In Footnote 6 in the October PN, the Bureau stated that it will "accept a time-share proposal that has been submitted by October 8, 2014, at 6:00 p.m. EDT, which has been signed by all the parties to the proposal and submitted by at least one party as an amendment to its application." This is a new (again, post-hoc) instruction that is inconsistent with the instructions given by the Commission in the July PN. At page 6 in the July PN, the Commission stated: "The

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[4] October PN, at 1.

[5] *NCE FM New Station and Major Change Applications Dismissed for Failure to Timely File,* Public Notice, at 3, DA 10-1724 (MB rel. September 13, 2010), *quoting, Silver Springs Communications,* Memorandum Opinion and Order, 3 FCC Rcd 5049, 5050 (1988) (subsequent history omitted).

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."

The word "amendments," is plural, as is the word "proponents." These constructions lead to the conclusion that the Commission intended that each application in the time-share group should be amended. That is certainly the case since each resulting authorization will incorporate the terms of the time-share agreement. The Bureau now suggests that all of the applications in a time-share group can be modified by the terms of the time-share agreement even though only one of them is officially amended by the applicant through the normal channels of CDBS.

The Petitioner is unaware of any situation in the prior history of the FCC broadcast applications where an amendment to one application operates as an amendment to other applications. This is contrary to normal rational processing policies and places the public at a disadvantage in attempting to review the status of a given application. If Applicant A files a time-share amendment to its application with an indication that it has entered into an agreement with Applicant B that would alter the operational aspects of Applicant B's proposal, members of the public reviewing Applicant B's application would be completely unaware of this change in Applicant B's application without an amendment to Applicant B's application. The Bureau's off-handed footnote is contrary to the Commission's instructions in the July PN and runs contrary to Commission policy in general. Only an amendment filed by the applicant to its own application should be accorded the status of a legitimate modification of the application.

Furthermore, like the retroactive adjustment of the filing deadline discussed above, this change in the instructions is unfair and prejudicial to groups of time-share applicants, ensemble

and individually, who did in fact complete and submit time-share amendments by every applicant in the group. In following the instructions as previously published, such groups and applicants were burdened with the obligation to file numerous amendments, while those who may have taken the short-cut, only needed to file one amendment to one application. Again, similarly situated applicants have been treated differently.

It is unclear how or why Footnote 6 in the October PN came about. If the Bureau perceived that applicants were confused about their requirements, clarification should have come before the filing deadline, not after. In any event, the instructions in this Footnote are contrary to the Commission's prior instructions, contrary to the public interest in that an applicant's participation in a time-share group might not be transparent to the public at large, and are grossly unfair and prejudicial to applicants who attempted to timely comply with the Commission's original instructions.

For the foregoing reasons, FRI respectfully urges the Bureau to reconsider and to rescind or modify the October PN in accord with the requests explained above.

Respectfully submitted,

FUTURE ROOTS, INC.

By: 

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November 12, 2014

CERTIFICATE OF SERVICE

I, Donald E. Martin, hereby certify this 12th day of November, 2014, that I have caused a copy of the foregoing document to be served by United States first class mail upon the following (who are the applicants (or their representatives) in LPFM MX Group 27):

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