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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Application of)	
)	
Clear Channel Broadcasting Licenses, Inc.)	File No. BNPFT-20130821ABF
)	
For a New FM Translator on)	Facility ID No. 148345
Channel 288 at Charlottesville, VA.)	
)	
)	

ACCEPTED/FILED

OCT 17 2013

Federal Communications Commission
Office of the Secretary

To: Secretary
Attn: Chief, Audio Division
Media Bureau

REPLY TO OPPOSITION TO PETITION TO DENY

Monticello Media LLC ("Monticello"), acting pursuant to Section 73.5006(c) of the Commission's rules, hereby replies to the Opposition to Petition to Deny (the "Opposition") filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") to Monticello's Petition to Deny (the "Petition") the above-captioned application (the "Application").

Introduction and Summary

Although full of sound and fury, Clear Channel's Opposition confirms the merits of Monticello's Petition. That Petition requested the dismissal or denial of Clear Channel's Application for a new FM translator station (the "Translator") because (1) Section 1.2105(b)(2) of the Commission's rules and the applicable *Public Notice* concerning Auction No. 83 precluded applicants from making any major amendments to their Form 175 applications (including a change of control), and Clear Channel had experienced a change of control when its parent – Clear Channel Communications, Inc. – was subject to a transfer of control that was consummated on July 30, 2008, and (2) Clear Channel had failed to amend its Form 175 application to report the change in control by August 6, 2008 as required by Section 1.2105(b)(4)

of the Commission's rules. 47 C.F.R. §1.2105(b)(4).

In its Opposition, Clear Channel contends that Section 1.2105(b)(2) does not apply to the Application because it is a "singleton" application and thus not subject to procedures applicable to mutually exclusive auction applications. That contention suffers from two (2) fatal defects. First, Clear Channel does not cite any language in the rule, any decision, or any other authority to support its contention that Section 1.2105(b)(2) was not and is not applicable to its Form 175 application. And, second, Clear Channel's Application did not become a "singleton" until July 2013 – more than ten (10) years after it was filed – and then only because of amendments Clear Channel filed to change the engineering parameters of its proposal. Stated another way, there is no rule, decision, or other authority that would entitle Clear Channel to escape the unambiguous language of Section 1.2105(b)(2).

Clear Channel's arguments concerning its failure to file a timely amendment to the Form 175 application are equally devoid of merit. Clear Channel contends that "it is simply absurd to suggest that Clear Channel 'concealed' its 2008 change in ultimate ownership from the Audio Division" because (1) that transaction was "one of the most significant broadcast company transactions of the new millennium. . ." and (2) Clear Channel discussed the matter with the Audio Division staff in January 2013. Opposition at 5, 7. Nowhere, however, does Clear Channel explain why it did not timely report the change in control of Clear Channel Communications, Inc. in August 2008 as required by Section 1.2105(b)(4). And nowhere does Clear Channel refute the notion embedded within Monticello's Petition that Clear Channel consciously refrained from submitting a timely amendment because of its concern that submission of such an amendment – at a time when the Application was mutually exclusive with

another pending translator application – would result in the dismissal of the Application.¹

The transfer of control of Clear Channel Communications, Inc. in 2008, coupled with Clear Channel’s failure to file a timely amendment to its Form 175 application, require that the Application be dismissed or denied.²

I. Transfer of Control Requires Dismissal.

There is no dispute that Section 1.2105(b)(2) and the *Public Notice* preclude the submission of any “major amendment,” which includes “an assignment or transfer of control.” 47 C.F.R. §2105(b)(2). *See Public Notice*, 18 FCC Rcd 1565, 1571, as amended, *Public Notice*, 18 FCC Rcd 3275 (2003) (applicants “will not be permitted to make major modifications to their applications,” which include a “change [of] control of the application”). Nor is there any dispute that Section 2105(b)(4) requires applicants to update their respective applications with any new developments within five (5) business days after the applicant becomes aware of the need for an amendment or after the reportable event occurs, whichever is later. 47 C.F.R. §1.2105(b)(4). And, finally, there is no dispute that Clear Channel never filed any amendment to its Form 175 application even though Clear Channel – through the transfer of control of its ultimate parent, Clear Channel Communications, Inc. – experienced a transfer of control in July 2008.

¹ On August 14, 2013, Clear Channel did file a letter requesting a waiver of Section 1.2105(b)(2) with respect to all Clear Channel Auction No. 83 applications which are mutually exclusive with other translator applications. Monticello has the same day filed an opposition to that waiver request because of its concern that any grant of the waiver request would have an impact on the Commission’s disposition of Monticello’s Petition.

² Clear Channel does not contest Monticello’s standing to file the Petition. *See* Opposition at 1-2. Clear Channel nonetheless recounts its view that Monticello’s Petition reflects Clear Channel’s refusal to accede to Monticello’s “contractual demands” that Clear Channel make the Translator available for use by one of Monticello’s radio stations. Clear Channel contends that the Application could not be included as one of the station assets sold to Monticello because it was “non-assignable.” Opposition at 2. There is no need for the Commission to address Clear Channel’s comments because the Commission has consistently held that private contractual disputes “are beyond its regulatory jurisdiction and must be resolved in a local court of competent jurisdiction.” *CBS Radio Stations, Inc.*, 22 FCC Rcd 20058, 20062 n. 13 (MB 2007). It is nonetheless ironic that Clear Channel claims at the outset that the Application is “non-assignable” – because of the strictures of Section 1.2105(b)(2) – and then spends the remainder of the Opposition explaining why the Application is indeed “assignable” and can therefore be processed by the Commission despite the transfer of control of Clear Channel Communications, Inc. in 2008.

The Opposition contends that Section 1.2105(b)(2) and the applicable language of the *Public Notice* became “irrelevant” when the Application “was determined to be a singleton. . . .” Opposition at 4. The fatal defects of that argument are two-fold.

First, neither Section 1.2105(b)(2) nor the *Public Notice* even suggests – let alone states – that the prohibition against major amendments ceases when it is determined that an applicant becomes a singleton. Nor does the Opposition cite any Commission decision or other authority to support its argument. The best the Opposition can do is to reference informal discussions in 2013 with the Audio Division staff, which the Opposition concedes are not binding.³ See Opposition at 8 n. 12.

The second fatal defect of Clear Channel’s argument concerns timing. Section 2105(b)(4) required that Clear Channel report the transfer of control of Clear Channel Communications, Inc. by August 6, 2008. The Opposition fails to acknowledge that the Application was mutually exclusive with another translator application in August 2008. See *Public Notice*, DA 13-1170 (May 21, 2013), annexed hereto as Attachment A, at 41. Clear Channel was able to eliminate that mutual exclusivity only by filing an engineering amendment in July 2013 – more than five (5) years after the transfer of control of Clear Channel Communications, Inc. was to be reported.⁴ See Amended Application (July 11, 2013), Exhibit 1 (“PURSUANT TO THE MAY 21, 2013 *PUBLIC NOTICE*, DA 13-1170, THE APPLICANT IS

³ The Opposition asserts that the Audio Division staff was “fully aware of the intervening 2008 transfer of control of [Clear Channel Communications, Inc.]” but did “not consider the major change restriction of Section 1.2105(b)(2) to be applicable to singleton applications.” Opposition at 4 (footnote omitted). However, there is no published decision to explain the Audio Division staff’s reasoning and, hence, no basis to know that the Commission staff had taken into account the arguments made in Monticello’s Petition. In any event, as Clear Channel acknowledges, the staff’s informal advice is not binding. See *e.g. Mary Ann Salvatoriello*, 6 FCC Rcd 4705, 4708 (1991).

⁴ Clear Channel makes much ado about the reference to Section 1.2105(b)(2) to “bidders” to emphasize the point that the section has no applicability to the Application. Opposition at 3-4. However, at the time of the transfer of control of Clear Channel Communications, Inc. in 2008, Clear Channel was indeed a “bidder” because it was then mutually exclusive with another translator application.

FILING IN THE SETTLEMENT AND AMENDMENT WINDOW TO CLEAR APPLICATION FROM MX GROUP”). Nothing in the Commission’s rules or in any published decision states that an applicant can refrain from fulfilling its obligation to update its Form 175 application for more than five (5) years to find out whether it would ultimately become a singleton.⁵

In the end, there is no basis for the Commission to sanction Clear Channel’s unilateral and prolonged deviation from the strictures of Section 1.2105(b)(2). As the United States Court of Appeals for the District of Columbia Circuit observed,

[I]t is elementary that an agency must adhere to its own rules and regulations. Ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned, *Teleprompter Cable Systems v. FCC*, 543 F.2d 1379, 1387 (D.C. Cir. 1976), for therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action. Simply stated, rules are rules, and fidelity to the rules which have been properly promulgated, consistent with applicable statutory requirements, is required of those to whom Congress has entrusted the regulatory missions of modern life.

Reuters Limited v. FCC, 781 F.2d 946, 957 (D.C. Cir. 1986). *Accord Teleprompter Cable Communications Corp. v. FCC*, 565 F.2d 736, 742 (DC Cir. 1977) (“[t]he Commission’s notion of the public interest cannot justify its failure to abide by its own rules and to act in a manner consistent with its own precedents”). Given the absence of any language within the rules or any published decision to nullify the mandate of Section 1.2105(b)(2), Clear Channel’s Application must be dismissed or denied.

II. **Failure to Disclose Change in Control Requires Dismissal or Denial.**

Clear Channel does not dispute that Section 1.2105(b)(4) required Clear Channel to amend its Form 175 application by August 6, 2008 to report the change in control of its ultimate

⁵ If that approach were permissible, the Commission would have to excuse every auction applicant from filing any major amendment until the day when upfront payments are required (because, even if an application were mutually exclusive with other applications, the other applicants might refrain from making any upfront payments and thereby transform a mutually exclusive application into a singleton application).

parent company, Clear Channel Communications, Inc. *See* Petition at 5. Nor does Clear Channel's Opposition provide any evidence to show that Clear Channel made *any* attempt to comply with that mandate. The Opposition does not even offer an explanation for Clear Channel's total disregard of the rule other than to describe the attention which the transfer of control proceeding received from various parties and the filings Clear Channel Communications, Inc. made with the Commission – including consummation notices and post-ownership reports in 2008 – and to say that the filing of the amendment in this context would have been an “additional, redundant step. . . .” Opposition at 8.

The filing of the amendment to the Form 175 application would hardly have been an “additional, redundant step.” As Clear Channel acknowledges, the Audio Division staff was not processing the auction applications in August 2008 and, in the absence of any amendment, would have had no occasion to review the Clear Channel applications. *See* Opposition at 7 (in July 2008 “no administrative action was imminent or even foreseeable”). And even if they were processing the auction applications, the Audio Division staff was not likely to be reviewing consummation notices or post-closing ownership reports (and Clear Channel certainly provides no evidence to show otherwise). Clear Channel's response thus leaves untouched the assumption set forth in the Petition that Clear Channel's failure to file a timely amendment reflected the hope that it “could skate by without notice and have the Application granted.” Petition at 6-7 (footnote omitted).

Nor can Clear Channel's total disregard of its obligation under Section 1.2105(b)(4) to amend its short form application be disregarded – as Clear Channel claims – because no action on the application was “imminent or even foreseeable.” Applicants like Clear Channel do not

have the discretion to unilaterally decide when they need to comply with unambiguous rules like Section 1.2105(b)(4).⁶

Clear Channel's Opposition makes much of its discussion with the Commission staff in January 2013 – almost five (5) years after the deadline passed for the required update of its Form 175 application – and the filing of its waiver request in August 2013 for mutually exclusive Clear Channel applications. However, none of that explains or justifies Clear Channel's failure to do what Section 1.2105(b)(4) plainly required: namely, the filing of an amendment to the Form 175 application on August 6, 2008.⁷

Clear Channel's deliberate disregard of its obligation to amend the Application in accordance with Section 1.2105(b)(4) provides a separate basis for dismissing or denying the Application.

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⁶ It would indeed be a slippery slope if the Commission were to condition an applicant's compliance with Commission rules on the time taken to process the pending application (regardless of whether an auction was or was not involved) and whether the applicant believed that Commission action was "imminent or even foreseeable."

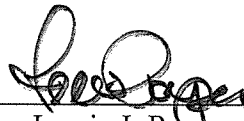
⁷ The Opposition states that, in its discussions with the Audio Division staff in January 2013, "[t]he consensus was that a waiver request of Section 1.2105(b)(2)'s limit on major ownership changes was not necessary for singleton applications. . ." Opposition at 7. That "consensus" says nothing about Clear Channel's obligation to file an amendment in August 2008. Nor would it matter if the Audio Division staff were included in that consensus, because the informal advice of Commission staff is not in any way binding on the Commission. *See e.g. Mary Ann Salvatoriello*, 6 FCC Rcd at 4708.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Application be dismissed or denied.

Respectfully submitted,

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ATTACHMENT A



PUBLIC NOTICE

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DA 13-1170
May 21, 2013

FM Translator Auction 83 Mutually Exclusive Applications Subject to Auction

Media Bureau Announces Immediate Opening of Settlement Period

Settlement Agreements and Primary Station Specification Amendments Due by July 22, 2013

Today, the Media Bureau announces a two-month period beginning with the release of this Public Notice and ending July 22, 2013 (the "Settlement Period"), for Auction 83 applicants with proposals in the mutually exclusive ("MX") groups identified in Attachment A to enter into settlement agreements or otherwise resolve their mutual exclusivities by means of engineering solutions.¹

Background. On February 6, 2003, the Media Bureau and the Wireless Telecommunications Bureau released a public notice announcing a March 10-14, 2003, FM translator auction filing window for non-reserved band (Channels 221 to 300) applications for new FM translator stations and major modifications to authorized FM translator facilities.² By this Public Notice, the Media Bureau provides, as Attachment A, a list of all pending window filed applications that it has identified as mutually exclusive with other applications submitted in the filing window. Accordingly, these 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

¹ See *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3386-87 (2012) ("*LPFM Fourth Report and Order*").

² See *FM Translator Auction Filing Window and Application Freeze*, Public Notice, 18 FCC Rcd 1565 (MB/WTB 2003) ("*Auction 83 Filing Window Public Notice*"). The window was subsequently extended to March 17, 2003. *FM Translator Auction Filing Window and Application Freeze Extended to March 17, 2003*, Public Notice, 18 FCC Rcd 3275 (MB/WTB 2003). 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.

³ See 47 U.S.C. § 309(j); 47 C.F.R. § 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).

least one application listed on Attachment A, it should contact immediately the staff listed at the end of this Public Notice.

Prohibited Communications. The prohibition on certain communications set forth in Sections 1.2105(c) and 73.5002(d) of the Commission’s rules became effective upon the filing of FCC Form 175 and applies to all broadcast service auctions.⁴ However, in certain circumstances, the Commission’s rules provide for a limited opportunity to settle, or otherwise resolve mutual exclusivities, following the filing of the FCC Form 175 applications.⁵ Specifically, pursuant to Section 73.5002(d)(3) of the rules,⁶ the MX group applicants listed in Attachment A are permitted to resolve their mutual exclusivities by means of engineering solutions or settlements during the Settlement Period. However, once this Settlement Period is closed, the prohibition on certain communications will again take effect for such applicants. The MX groups listed in Attachment A include applications specifying locations in both “Spectrum Limited” and “Spectrum Available” markets,⁷ and also locations outside of all markets.

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 (“the Act”), and the pertinent requirements of Section 73.3525 of the Commission’s rules, including, *inter alia*, reimbursement restrictions.⁸ 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 application and all other applications in the MX group.⁹ 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, and any necessary amendment(s) to their FCC Form 349 Section III-A Tech Box(es) prior to the close of the Settlement Period.¹⁰ The staff will request complete FCC Form 349 applications from the surviving applicant(s) upon approval of the settlement agreement.¹¹

⁴ See 47 C.F.R. § 1.2105(c), 73.5002(d).

⁵ See *Broadcast First Report and Order*, 13 FCC Rcd at 15927, 15980-81; *Broadcast First Reconsideration Order*, 14 FCC Rcd at 8753-8759 (extending limited settlement opportunities to mutually exclusive auction applications in the broadcast secondary services). See also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”).

⁶ 47 C.F.R. § 73.5002(d)(3).

⁷ See *LPFM Fourth Report and Order*, 27 FCC Rcd at 3398-3406.

⁸ See 47 U.S.C. § 311(c); 47 C.F.R. § 73.3525.

⁹ See 47 C.F.R. § 73.5002(e).

¹⁰ See 47 C.F.R. § 73.3525(a); see also “Filing Procedures,” *infra*.

¹¹ When submitting the complete FCC Form 349, surviving applicants must simultaneously submit the required Form 349 application filing fee and a Form 159, Remittance Advice. See Schedule of Charges at 47 C.F.R. § 1.1104. Method and forms of payment are addressed in 47 C.F.R. §§ 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 C.F.R. § 1.1116. Governmental entities are exempt from this fee requirement. Also exempt are applicants for noncommercial educational FM translator facilities, as defined in 47 C.F.R. § 74.1201(c). When filing a fee-exempt application, an applicant must complete Section I, item 3 of Form 349 and provide an explanation.

Technical Resolution Amendments. Applicants resolving their mutual exclusivities by means of technical resolution amendments, described *supra*, may do so by submitting an amended FCC Form 349 Section I, the Section III-A Tech Box, and the Section III Preparer's Certification (October 2009 version). Technical resolution amendments may be non-universal but the amendment must resolve all mutual exclusivities between the application and all other applications in the pertinent MX application group.¹² A technical resolution amendment must be a "minor" change, as defined by the rules,¹³ to the engineering proposal specified in its original Form 175 application and must not create new mutual exclusivity or application conflicts. Applicants must include a Preclusion Showing for any Tech Box amendment specifying a transmitter site within 39 kilometers of any Appendix A Market grid and/or within any Top-50 Spectrum Limited Market. Detailed instructions on completing Preclusion Showings are provided in prior Media Bureau public notices.¹⁴ A technical resolution amendment which creates new application conflicts or does not include a required Preclusion Showing will be returned. The staff will request complete FCC Form 349 applications for technically acceptable proposals.¹⁵

Potential Dismissal of Certain NCE FM Translator Applications. Both commercial and noncommercial educational ("NCE") applications were submitted in the 2003 Auction 83 filing window.¹⁶ To better serve the public interest and to avoid the harsh result of dismissal based on subsequently adopted processing rules,¹⁷ the Commission allowed certain applicants in prior broadcast auctions to amend their station designations from "NCE" to "commercial."¹⁸ To afford the similarly situated Auction 83 FM translator applicants an opportunity to participate in the upcoming auction, the Media Bureau recently waived the prohibition against major amendments to Form 175 filings and allowed NCE FM translator

¹² See 47 C.F.R. § 73.5002(e).

¹³ See 47 C.F.R. § 74.1233(a).

¹⁴ See *Media Bureau Announces April 1 – April 19 Filing Window for FM Translator Auction 83 Preclusion Showings*, Public Notice, 28 FCC Rcd 2495 (MB 2013); *Media Bureau Provides Additional Guidance on Preclusion Showing Filing Requirements for Auction 83 FM Translator Applicants*, Public Notice, 28 FCC Rcd 2840 (MB 2013).

¹⁵ See *supra* note 11.

¹⁶ *Auction 83 Filing Window Public Notice*, 18 FCC Rcd at 1565 n.1 (a window for proposals in the non-reserved band provides a filing opportunity for both NCE and commercial FM translator applicants. See 47 C.F.R. § 74.1202(b) (specifying that noncommercial FM translators may be authorized to operate on Channels 201-300)).

¹⁷ Under the rules adopted in the *NCE Second Report and Order*, an auction applicant's attempt to change its self-identification from NCE to commercial is considered a major amendment, which is prohibited after the Form 175 filing deadline. See 47 C.F.R. § 1.2105(b)(2). Moreover, any application for an NCE station that remains mutually exclusive with any application for a commercial station, after any settlement opportunities expire, is returned as unacceptable for filing. See 47 C.F.R. § 73.5002(b).

¹⁸ See *American Family Association, et al.*, DA 04-3037, Letter, 19 FCC Rcd 18681 (MB/WTB 2004) (Auction 37); *Supplemental Notice Concerning Status of FCC Form 175 Applications to Participate in Auction 37*, Public Notice, 19 FCC Rcd 18696 (MB/WTB 2004); *Christian Broadcasting, Inc.*, Letter, 24 FCC Rcd 2212 (MB/WTB 2009) (providing a 30-day period to amend certain Auction 84 applications); *Window Opened to October 30, 2009, to Permit Amendment of Applications for Noncommercial Educational Stations in Pending, Closed Mixed Groups*, Public Notice, 24 FCC Rcd 12188 (MB 2009) (Closed Broadcast Auction 88).

applicants to de-select their earlier “noncommercial educational” status election.¹⁹ Attachment B identifies the commercial/NCE status of each Attachment A applicant as specified on its Form 175 as of the close of the April 8-April 17 de-selection filing window.

An applicant is required to identify the primary station for each proposed translator in the FCC Form 349, Section III-A Tech Box.²⁰ Pursuant to the FM translator rules,²¹ specification of an NCE primary station in the Tech Box defines an FM translator station as NCE and therefore renders an application proposing such facilities as ineligible to participate in Auction 83.²² However, as stated in the *De-selection PN*, Auction 83 FM translator applicants that had previously designated an NCE filing status (in the 2003 Auction 83 filing window) and specified a corresponding NCE primary station in their Tech Box, would be afforded an opportunity prior to auction to amend their primary station specification on their respective Auction 83 Tech Box. Accordingly, we will permit primary station amendments during the Settlement Period. A primary station amendment will be treated as a minor amendment. **Notwithstanding the de-selection of its NCE filing status in the April 8-April 17, 2013, filing window, an FM translator applicant that specifies an NCE primary station as of the close of the Settlement Period, and is not otherwise subject to a pending settlement agreement or technical resolution, is statutorily barred from participating in Auction 83.**

In accordance with Section 73.5002(b) of the rules, an NCE FM translator application that remains in conflict with a commercial FM translator application after the close of the settlement window will be returned as unacceptable for filing, and the remaining applications for commercial FM translator stations will be processed in accordance with competitive bidding procedures.²³ For these purposes, any applicant that either proposes to rebroadcast the signal of an NCE primary station, or that selected “NCE” status on their original Form 175 and did not timely file a de-selection amendment, will be considered noncommercial educational. The Commission will proceed to auction with any remaining mutually exclusive commercial proposals that are not resolved by the parties.

Filing Procedures. Joint requests for approval of settlement agreement must be filed in original and two copies, plus one additional copy for each applicant that is a party to the settlement, **on or before July 22, 2013**, with the Commission’s Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, DC 20554. In addition, it is requested that a courtesy copy of all such filings be delivered to James Bradshaw, Audio Division, Media Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 2-B450, Washington, DC 20554.

Applicants filing a technical resolution amendment must submit an amended FCC Form 349 Section I, the Section III-A Tech Box, and the Section III Preparer’s Certification (October 2009 version)

¹⁹ See *Media Bureau Announces April 8-April 17 Filing Window to Permit Amendment of Auction 83 Noncommercial Educational FM Translator Applications*, DA 13-587, Public Notice (MB, rel. April 2, 2013) (“*De-selection PN*”).

²⁰ FCC Form 349, Section III-A Tech Box, Item 2.

²¹ See 47 C.F.R. § 74.1201(c) (defining a “noncommercial FM translator” as an FM broadcast translator station which rebroadcasts the signals of a noncommercial educational AM or FM radio broadcast station).

²² See 47 U.S.C. § 309(j)(2)(C); 47 C.F.R. § 73.5000(b) (applications for NCE broadcast stations, as described in 47 U.S.C. § 397(6), on non-reserved channels are not subject to competitive bidding procedures).

²³ 47 C.F.R. § 73.5002(b).

electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms filing system. When filing a technical resolution amendment, applicants must select "Amendment to Short Form application for FM Translator Auction Window 83" on the Pre-form for Form 349 (Question 2 – Application Purpose).²⁴ In addition, the CDBS file number previously issued to the Form 349 Section I and Section III-A Tech Box filed in the FM translator Auction 83 filing window must be entered on the Pre-form in the field "Eng. Proposal File Number."²⁵ Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing web site at: <http://www.fcc.gov/online-filing>.

Applicants amending their specified primary station must file an amended FCC Form 349 Section I and the Section III-A Tech Box electronically through CDBS. When filing a primary station specification amendment, applicants must select "Amendment to Short Form application for FM Translator Auction Window 83" on the Pre-form for Form 349 (Question 2 – Application Purpose). The CDBS file number previously issued to the Form 349 Section I and Section III-A Tech Box filed in the FM translator Auction 83 filing window must also be entered on the Pre-form in the field "Eng. Proposal File Number."

A surviving NCE FM translator applicant in a settlement agreement, or an NCE FM translator applicant that proposes to resolve its mutual exclusivities through a technical resolution amendment, must also file electronically FCC Form 349.²⁶ In accordance with Section 1.1116(c) of the Commission's rules, these Form 349 applications are exempt from application filing fees.

The mutually exclusive applicants' FCC Form 349 Section I and Section III-A Tech Box submissions filed during the Auction 83 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.

For additional information, contact James Bradshaw, Rob Gates, Larry Hannif-Ali, or Lisa Scanlan of the Audio Division at (202) 418-2700.

This Public Notice contains the following Attachments:

Attachment A: FM Translator Mutually Exclusive Applications Subject to Auction

Attachment B: Auction 83 Applicants' NCE or Commercial Status Selection, as of the Close of the April 8-April 17 De-Selection Filing Window

-FCC-

²⁴ When subsequently directed to file the complete FCC Form 349, applicants must select "Long Form Application for FM Translator Auction 83" on the Pre-form for Form 349 (Question 2 – Application Purpose).

²⁵ The CDBS file number issued to the Form 349 Section I and Section III-A Tech Box filed in the FM translator Auction 83 filing window is listed in Attachment A to this Public Notice.

²⁶ These non-mutually exclusive NCE FM translator applicants do not need to fill out Form 349 Section IV-NCE Point System Factors.

Attachment A

DA 13-1170

FM Translator Mutually Exclusive Applications Subject to Auction

#	Group	State	Community	Chn	Applicant	File Number	Facility ID
1841							
1842	495	VA	Marion	225	Appalachian Educational Communication Corporation	20030313AFQ	144395
1843	495	VA	Marion	225	Positive Alternative Radio, Inc.	20030312AMN	142567
1844							
1845	496	VA	Honaker	236	Appalshop, Inc	20030313AQA	144951
1846	496	VA	Wise	236	Positive Alternative Radio, Inc.	20030310AEE	141152
1847	496	VA	Honaker	236	Ron Beavers	20030317LDS	157227
1848							
1849	497	VA	Berryville	241	The Sister Sherry Lynn Foundation	20030317MGZ	157774
1850	497	VA	Berryville	241	The Sister Sherry Lynn Foundation	20030317MNA	158365
1851							
1852	498	VA	Mountain Lake	248	Appalshop, Inc	20030313AQG	144979
1853	498	VA	Christiansburg	248	Positive Alternative Radio, Inc.	20030310AKP	140358
1854							
1855	499	VA	Harrisonburg	272	Positive Alternative Radio, Inc.	20030310ACQ	141359
1856	499	VA	Broadway	271	Virginia Tech Foundation, Inc	20030317LGB	150808
1857							
1858	500	VA	Roanoke	275	Community Public Radio, Inc.	20030313BAO	145165
1859	500	VA	Vinton	275	Virginia Tech Foundation, Inc	20030317LHT	148906
1860							
1861	501	VA	Winchester	278	Positive Alternative Radio, Inc.	20030312ALI	142768
1862	501	VA	Winchester	277	Starboard Media Foundation, Inc.	20030313ALQ	144808
1863							
1864	502	VA	Charlottesville	290	Clear Channel Broadcasting Licenses, Inc.	20030317APS	148345
1865	502	VA	Charlottesville	290	Positive Alternative Radio, Inc.	20030312AKF	142782
1866							
1867	503	WV	Lewisburg	299	Faith Communications Network, Inc.	20030314AQS	143004
1868	503	VA	Covington	298	Virginia Tech Foundation, Inc	20030317LJD	148092
1869							
1870	504	VA	Harrisonburg	300	Capstar Tx Limited Partnership	20030317KQC	157175
1871	504	VA	Harrisonburgh	300	Clear Channel Broadcasting Licenses, Inc.	20030317APE	145686
1872	504	VA	Harrisonburg	300	Clear Channel Broadcasting Licenses, Inc.	20030317APJ	148178
1873	504	VA	Harrisonburg	299	Positive Alternative Radio, Inc.	20030310ACG	141360
1874							
1875	505	VT	Barre	247	Radio Vermont Classics, L.L.C.	20030312AKB	139973
1876	505	VT	Montpelier	247	Vermont Public Radio	20030317HKO	139911
1877	505	VT	Barre	250	Vermont Public Radio	20030317HHV	154466
1878							
1879	506	VT	Montpelier	252	Radio Vermont Classics, L.L.C.	20030312AJT	140228
1880	506	VT	Montpelier	253	Vermont Public Radio	20030317HKM	139915
1881							
1882	507	VT	Brattleboro	262	Saga Communications Of New England, Inc.	20030317AHP	140890
1883	507	VT	Brattleboro	262	Vermont Public Radio	20030317HKV	139893
1884							
1885	508	VT	Burlington	273	Vermont Public Radio	20030317HKF	139921
1886	508	VT	South Burlington	275	Westport Broadcasting	20030317KAX	153531

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that a copy of the foregoing “**REPLY TO OPPOSITION TO PETITION TO DENY**” was served via first class U.S. mail, postage paid, on this 17th day of October, 2013 to the following:

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