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## FCC Provides Guidance On New FM Application Processing Approach

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In November, 2006, the Commission adopted rules to permit certain community of license changes to be sought through minor modification applications, rather than through the far more cumbersome and time-consuming rulemaking process which had previously been *de rigueur*. One anticipated benefit arising from this change is the elimination of the risk of counterproposals. In the rulemaking context, a simple proposed channel change could (and frequently was) hijacked by counterproponents, to be combined into a larger proceeding that would redraft the channel allotments covering vast geographic areas. By avoiding that pitfall, the Commission hopes for a more rapid roll-out of changes to serve the public interest.

When it released its decision last November, the Commission promised to release, before the effective date of the new rules, a helpful explanatory public notice to guide prospective applicants in their effort to jump through all the freshly-minted hoops. The rules became effective on January 19<sup>th</sup> – but no public notice was released. As winter snows turned into spring nor'easters, we all waited patiently for the public notice. (Reports are that the public notice was lost in the vortex that exists between the 2<sup>nd</sup> and 8<sup>th</sup> Floors at the FCC.)

On April 10<sup>th</sup>, the Commission released the long-awaited public notice. As a general matter, it reminds everyone that all minor modification applications require a filing fee to be submitted, and all community of license changes require the submission of a schedule demonstrating that the proposed change would serve the allotment principles outlined in Section 307(b) of the Communications Act. The notice also provided a number of illustrative examples of situations which potential applicants might encounter. We thought it would be helpful to highlight a few interesting examples for future planning purposes.

First, the Commission will **not** permit a change of community of license and a non-adjacent channel change at the same time. Instead, a licensee *may* file a minor modification application to change channels *first*, and then upon commencement of program tests and the submission of a license to cover application, the licensee may submit a new minor modification application specifying the new community of license.

Second, if there are involuntary channel substitutions involved, the Commission will first require the submission of the triggering minor modification application, and then, only if an order to show cause is released, will the target of the involuntary substitution be required to submit a minor modification or license application. If a rulemaking petition for a new allotment is involved, then it must be filed with the triggering minor modification application, and each must reference the other.

Third, if a winner of a new FM allotment in the recent auction seeks to change the community of license, it must submit a complete construction permit application (including the auction certifications, a 307(b) Showing, and the filing fee for a new FM station), and file it in accordance with the post-auction closing public notice. Additionally, any coordinated filings with other licensees, or involving co-owned stations, including upgrades, downgrades, community of license changes, or petitions for new allotments, *must* be filed *on the same day*, and *must* reference one another.

Finally, if an AM licensee or permittee seeks to change the community of license of a facility that was obtained pursuant to a dispositive 307(b) preference, the applicant must demonstrate that the proposed community is comparatively superior to those applications in the original pool of mutually-exclusive applications.

As the Commission notes in the Public Notice, we would be remiss in not mentioning that these examples are not binding precedent, but merely offered to provide guidance.