

## Low Power Radio – Conflicting Applications

### Basic Information Sheet

April 22, 2003



The FCC is about to announce all of the mutually exclusive low power radio application groups. Up until this time, all the LPFM applicants that have moved ahead in the FCC's process have been "singletons." Singletons are applicants that did not compete against any other applicant. Now, the FCC will process mutually exclusive applications, called "MXs." This means that the applicants in each group conflict with each other – the FCC cannot grant them all. The FCC must decide who will receive the license. Before they pick a winner, the FCC wants to see if groups can work out an agreement among themselves. The FCC's first Public Notice will identify conflicting groups and invites "universal settlements" (where all members of the group agree to a plan). Next, if the FCC does not receive a universal settlement, the FCC will issue a second Public Notice inviting applicants tied for first place to share points.

#### **How will the FCC decide among conflicting applicants?**

The FCC will evaluate applicants according to three criteria -- they will assign points for these criteria, the applicant with the most points will receive the license. Applicants will receive one point for each of the following three criteria: (1) "established community presence" -- the applicant must certify that it met the FCC's "local" criteria for the last two years (headquarters, campus, or 75% of board within 10 miles of the proposed antenna); (2) the applicant pledges to operate at least 12 hours per day; (3) the applicant pledges it will broadcast at least 8 hours per day of programming that was produced within 10 miles of the antenna.

#### **What if there is a tie?**

There are two options if there is a tie. First, if applicants are tied and there is no agreement to share points, the FCC will do the following. If there are eight or fewer applicants, the FCC will divide the eight-year license term into equal parts, and give each applicant one of the parts. After 8 years, the license will again be available to the public. If there are more than eight applicants, the FCC will divide the license term among the eight applicants with the longest "established community presence," as defined above.

Second, if more than two applicants are tied for first place, the first place applicants (and *only* first place tied applicants) can combine to share points and beat the other first place tied applicants (see below).

#### **Can the applicants avoid the point allocation process and speed up processing?**

Yes, but only if ALL the applicants in your MX group agree, and subject to some other limits. If all the applicants agree, you can file a "universal settlement." (It's called "universal" because all the members of the group participate). You should start on this process as soon as possible.

For information about how to file a universal settlement, see the information on filing for a universal settlement on MAP's web site, at <http://www.mediaaccess.org/programs/lpfm/index.html>, and use the sample documents on the National Federation of Community Broadcasters web site. <http://www.nfcb.org/projects/lowpowerfm.jsp>

### **How do we share points with another applicant?**

You may only share points with another applicant *if* you are *tied* with that applicant *for first place*. First, you must make an agreement with the other applicant to share the station. You must write down how much time each applicant will receive on the station. Each applicant must receive at least 10 hours of time per week. Once you make an agreement, you must submit the agreement to the FCC. The FCC will issue a public notice in the future signaling the time to file a point sharing agreement. But you should get started talking to other groups right away if you think you can share points.

You use Form 318 to submit your agreement to the FCC. Technically, you are “amending” your original application. Complete Section I of Form 318 using the same information you used to apply (or updating address, etc. to be accurate). In Question 3, however, check the box “amendment to pending application;” and complete letter “a” with your file number; and submit an exhibit that states you are amending Section III of the application and describes the time-sharing agreement and the your new combined point totals. See the sample first page of an amendment to share points on the MAP web page at <http://www.mediaaccess.org/programs/lpfm/index.html>. You must attach an exhibit describing the agreement among the groups, and the commitments to earn points in the point system. Prepare this document using word processor. See the example at the end of this document.

Even if you filed on paper originally, you **MUST** file form 318 electronically. To log in under your existing account, or to create a new account, go to: <http://svartifoss2.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts>  
When you log in, select Form 318, and complete the form electronically.

If you cannot file electronically and no one in your group can file electronically, you can submit a request for waiver to the FCC. Contact Media Access Project at 202-232-4300 if you need help with asking for a waiver.

### **How long do I have to make and submit these agreements?**

The FCC gives you officially 60 days from the FCC's notice for applicants in your group to submit a either an agreement to share points or a universal settlement, otherwise the FCC will pick the winner or divide up the license according to the criteria described above. The FCC will not pick the winner immediately after the 60 days, but it might happen any time after 60 days.

### **Can we submit a universal agreement early, before the FCC issues a list with our MX group?**

Yes! It would be a very good idea to submit a universal agreement early. The earlier you can come to an agreement among all the group members, the faster you can get your license. (This **DOES NOT** apply to filing to share points for tied applicants, that must happen after the FCC issues its next Public Notice assigning points.)

## **Examples of Sharing Points and Universal Settlements**

### **Example I – Sharing Points:**

Applicant A (school) has 1 point

Applicant B (political activists) has 3 points

Applicant C (community organization) has 3 points

Applicant D (arts organization) has 3 points

## **Sample Time Sharing Agreement for sharing points or a Universal Settlement**

Our time sharing and programming agreement is as follows:

- Applicant A (school) will broadcast every day from 3 pm until 6 pm and on Saturday between 9 am and 6 pm.
- Group C (community radio) will broadcast every weekday from 6 am until 3 pm, and on Sunday from 6 am until 11pm.
- Applicant D (arts organization) will broadcast every weekday from 6pm until 11pm, and Saturday from 6pm until 1 am.
- The cooperating applicants promise to broadcast 12 hours of programming per day.
- The cooperating applicants promise to broadcast 8 hours of local programming per day.

Applicants C and D together, therefore, are entitled to 6 points under the FCC's rules. Applicants C and D voluntarily agree to give time to Applicant A.

This format can be used for any agreement, whether to share points or to agree to a universal settlement.