

**RESPONDING TO PETITIONS TO DENY--GUIDANCE FOR  
LOW POWER RADIO APPLICANTS**  
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After you complete your application, you have several hurdles to jump before actually obtaining your license. One of the most significant is the opportunity for certain members of the public to oppose your application by filing a "Petition to Deny" or an "informal objection."

The good news is that you will not face either of these until the FCC has already determined that your application is sufficient! This means anyone opposing your application faces a high hurdle themselves -- they must prove that the FCC was wrong. ***This burden is so tough that the FCC rarely ever denies an application after it is accepted for filing.***

So, although it may seem scary, if you completed your application, and the FCC has accepted it you should be able to handle the next phase in the process. If you have an attorney who can assist you, however, now is a good time to ask for his or her help, particularly with the procedural matters. A more legalistic memo is available to attorneys assisting applicants with Petitions to Deny. See <http://www.mediaaccess.org/programs/lpfm/index.html#apply>.

### **Basic Information About the FCC Process**

In order for the FCC to give you a license, it must show that doing so is "in the public interest." The FCC does this in several ways. Primarily, it designs the application form to collect all the information it should need to make the determination. However, the FCC cannot ignore information that it obtains about the information in your application. Thus, if the FCC knows that information in your application was false or inaccurate, it cannot give you a license.

The public opportunity to participate at the FCC is the primary way that the FCC verifies the that the information in your application is true. The public has two vehicles to draw attention to problems in your application--a Petition to Deny and an informal objection. Although the Petition to Deny process is a bit more complicated procedurally, and thus is the focus of this memo, basically both procedures give information to the FCC. ***And once the FCC gets this information it cannot ignore it--even if the person who first made an objection changes his or her mind and withdraws the objection.*** Therefore, even if a Petition to Deny violates some of the technical requirements described below, the FCC will consider the information it contains as an informal objection. The impact on your application is essentially the same. You will have to make sure that the FCC has the information it needs to verify that you are eligible for a license.

The easiest mistake to make is to lie to the FCC. **DO NOT LIE TO THE FCC.** Lying will jeopardize your application more than any other mistake you could possibly make. Thus, if during this process, questions are raised about your application, and you realize you made a mistake or presented something inaccurately by mistake -- ***admit the mistake, correct it, and explain it.*** The FCC wants to give you the license, but it can't -- and won't -- unless you are honest.

### **Procedure Before Petitions to Deny are Filed**

After an application for an LPFM license is filed, the FCC evaluates the application. If, in the FCC's opinion, the application is sufficient, it will officially "accept the application for filing."

The FCC has already announced the first 255 applications accepted for filing. See [http://www.fcc.gov/Bureaus/Mass\\_Media/News\\_Releases/2000/nrmm0047.html](http://www.fcc.gov/Bureaus/Mass_Media/News_Releases/2000/nrmm0047.html).

Petitions to Deny *must* be filed within thirty (30) days of the day that the FCC issues a Public Notice listing the applications that have been accepted for filing. If someone files a Petition to Deny against your application, *that person must send a copy to your address*. For this reason, it is important that the address listed in your application is current.

### **Limits on and Content of Petitions to Deny**

A Petition to Deny cannot be filed by just anyone. It must be filed by someone who will be directly and substantially affected if your application is granted. (Legally, this means the person or organization is a "party in interest" or has "standing.") Because of this rule, as a practical matter, only three types of people or organizations can file a Petition to Deny: (1) competitors suffering technical signal interference; (2) direct economic competitors; and (3) individuals who live within the broadcast area of the licensee. *A Petition to Deny must show that the organization or individual filing the Petition (called a "petitioner") meets this criteria.*

In addition, a Petition to Deny must allege *some factual deficiency* about your application and it *must include an affidavit signed by someone with personal knowledge of those facts*. Specifically, the Petition must show that some of the facts that you provided in your application are not correct.

Because parties that file petitions to deny have additional procedural rights, such as legal rights to appeal in court, you may wish to show that it does not meet the criteria when you respond (see below). But remember that the contents will still be treated as an informal objection and will be considered by the FCC.

### **Opposing a Petition to Deny**

*You have only 10 days* from the day a Petition to Deny is filed to oppose the Petition to Deny, this document is called an "Opposition to Petition to Deny." If the Petition to Deny is filed early, you still only have 10 days from the day it was filed to file an Opposition. In most cases, you will get three (3) extra days to respond if the Petition arrives to you by U.S. mail (to account for the time it takes to get to you). But if you receive the Petition by fax or by express mail, such as Fed Ex, you only have 10 days (You must count weekends and holiday in the 10 days). Finally, you don't have to file on a weekend or a national holiday.<sup>1</sup>

**Remember, you can always file early, so if this is too confusing just file early rather than miscounting the days and filing late.**

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<sup>1</sup> For example, you receive a Petition to Deny that was filed on January 22, 2001, and your copy arrives through the U.S. mail. Your Opposition would normally be due no later than February 1, 2001, but you get three extra days, so your Opposition would be due no later than February 4, 2001. It doesn't stop there, however, because February 4 is a Sunday, so you must file your Opposition no later than February 5, 2001.

***Do not worry if you cannot make the deadline!*** First, if you know in advance, you can ask the FCC for an extension. Write them a letter explaining why you need more time (for example, explain you are a small organization with few resources). Second, even if you do not ask for or receive an extension, the Opposition is not your only opportunity to provide information to the FCC (see below for more information on this).

It does not count against you if you do not file an Opposition within the deadline. Providing information will help the FCC explain why its decision to accept your application is correct. It is better to file the information, if you have it, within the deadline, but if you can't, it is better to file it late than not to file it at all.

### **Should We Respond to a Petition to Deny?**

You should respond to a Petition to Deny if you have factual information to submit that will help the FCC to show why the information you submitted in your application is correct and you are eligible. ***The FCC will not seek out information to disprove the information submitted in a Petition to Deny or informal opposition--it only looks at things submitted to it.*** Thus, if you believe the information in the Petition to Deny is false, you should demonstrate why that is the case.

Don't bother filing if you are just going to insult each other. The person or organization filing a Petition to Deny may say some things that make you mad. Responding to attacks that are not factual is not in your interest. Stick to the facts. Calling the other person a liar will not help you. Filing documents or a signed statement showing the allegation to be false ***will*** help you.<sup>2</sup>

### **Format and Procedure for Filing an Opposition to Petition to Deny**

You can format your Opposition either as the example shows, or simply as a letter. It must be typed and on 8 1/2 x 11 inch paper. You must put your file number (available in the FCC's public notice announcing the applications accepted for filing) on the top of the opposition.

***A person with actual knowledge about the facts in your Opposition should sign it.*** If you have copies of documents that will prove certain facts, make photocopies and attach them to the Opposition.

**In addition to sending a copy to the FCC, you *MUST* send a copy of the Opposition to the person or organization who filed the Petition (or Petitions) to Deny on the *SAME DAY* that you send it to the FCC.** To show the FCC that you have sent a copy to the other side, you must sign a statement, called a "certificate of service" saying that you sent a copy. See the example at the end of this document.

You cannot file a Petition to Deny electronically, you must mail it in on paper. Mail it (or express mail it) to:

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<sup>2</sup> Technical interference challenges to low power radio applications should not be successful, as long as the channel you applied for was listed as available in the FCC's channel finder. Thus, it is probably not necessary to respond to these allegations. (Remember, now that you have an application submitted, your channel will no longer be available in the channel finder, because you are occupying it!)

Federal Communications Commission  
Office of the Secretary  
445 Twelfth St., SW  
Room TW-B204  
Washington, DC 20054

Submit the original signed copy to the FCC, plus an extra copy. In addition, just as you did with your application, you should submit a third copy of your application, marked "Stamp & Return" and a stamped self-addressed envelope. The FCC will mark the date and time it received your form and mail it back to you as proof of when your application was received. Remember to keep a copy for your records. Finally, send another copy directly to the Mass Media Bureau. Send it to:

Federal Communications Commission  
Mass Media Bureau, Audio Services Division  
Attn: Low Power Radio  
445 Twelfth St., NW  
Second Floor  
Washington, DC 20554

Total, you will need the original plus a minimum of five copies (FCC, Stamp & Return, Mass Media Bureau, Petitioner, and your own.)

### **Communicating with the FCC After a Petition to Deny is Filed**

After a Petition to Deny is filed against your application, the FCC treats your application as a special matter. Most important, whenever you or anyone else provides information to the FCC about your application, *they MUST provide the same information at the same time* to everyone who has filed in regard to your application.<sup>3</sup> This means that:

- You *cannot* call FCC staff on the phone to give them facts about your application (unless you set up a conference call with the other side on the line).
- The person or organization who filed the Petition to Deny also cannot call the FCC staff on the phone to discuss the facts in their Petition or in your application.
- If you want to provide information to the FCC, *do it in writing, and send a copy to the person or organization that filed a Petition to Deny* on the *same day* you send it to the FCC.
- If the person or organization that filed the Petition to Deny provides information to the FCC, *they must mail a copy to you.*
- You may call the FCC staff on the phone only to ask question about *status* (such as where in the process is your application, or to make sure they have received a docu-

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<sup>3</sup> This is different from the rulemaking proceeding -- in a rulemaking, you only send documents to the FCC. In this proceeding, you must send documents to the other person or organization.

ment you mailed in).

It is a good idea to keep a record for yourself of any time that you speak to the FCC. Write down the name of the person, which part of the FCC they work in, and what you said and they said.

### **What Type of Challenges are the Petitions to Deny Likely to Make?**

A Petition to Deny can challenge any fact that you put in your application. Just about all the facts are necessary for your application. (Simple things like spelling errors, however, do not count.) You may see:

- A challenge to whether 75% of the board members actually live in the service area of the station;
- A challenge stating that the "parties to the application" listed in Question 3 are not really the people in control of the organization. For example, the Petitioner might argue that a person who previously engaged in unlicensed broadcasting is really in charge of your organization;
- A challenge to the age of your organization.

Any fact in your application including your character, however, can be the subject of a Petition to Deny.

### **Reply to Opposition to Petition to Deny**

After you file an Opposition, the other side can file a "Reply" within 5 days. They must send you a copy of the Reply. You should not respond to their Reply unless you have new information that you haven't supplied already.

### **Withdrawal of Petitions to Deny**

You may decide that you can work out an agreement with the Petitioner. Although the FCC encourages parties to seek resolve disagreements about applications among themselves, there were so many charges of abuse that the FCC has tightly regulated the process. As a result, you must be very careful to avoid getting yourself in trouble by trying to settle your dispute.

First and foremost, you cannot "buy off" a Petitioner (or informal objector) by paying them money or giving them something of value to withdraw their Petition or objection.<sup>4</sup> You also may not threaten to file a petition to deny in order to extract a payment. So, if anyone attempts such a "shake down," do not get involved. Try to document the improper offer so you can report it to the FCC if necessary.

A petitioner must get the FCC's permission to withdraw the Petition to Deny. In addition, a

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<sup>4</sup> There is one exception to this policy, but if you have the funds to spend, you should also expend funds to obtain the specialized legal advice necessary to do this properly.

petitioner withdrawing his or her petition must file details about any agreement between the petitioner and the applicant and a sworn statement that the petitioner is not personally receiving any payment. Similarly, if an applicant agrees to provide anything other than money in exchange for withdrawal of a petition to deny ("non-financial consideration" such as, for example, broadcast time), both sides must file the details of the agreement with the FCC along with sworn statements attesting that the petitioner is not being paid indirectly by means of such an arrangement.

Remember, the FCC will examine any information it receives, even if the accuser later withdraws its petition. Thus, settling a case under those conditions often does little good.

### **What Happens Next?**

After the Petition to Deny, the Opposition, and the Reply, the FCC will look at the facts and questions raised about your application. The FCC has two options. First, it can deny the Petition to Deny, and grant your application. It must write an explanation for why it is rejecting the Petition to Deny. Second, it can decide that it needs more facts. Usually, if it needs more facts, it will write you a letter asking you questions.

If you receive a letter from the FCC, don't panic. The FCC usually writes a letter to describe the information that it will need to grant you a license. Thus, you should read it carefully and supply the information they need. Answer their questions in a letter and send a copy to the other side. As stated above, do not lie to the FCC. If you have a lawyer helping you, ask your lawyer to help.

You may have to send several letters to the FCC answering questions and responding to the other side's letters. After the FCC has all the facts, it will either deny the Petition to Deny, or it must take steps to deny your application.

The FCC cannot deny your application, however, unless it "designates your application for a hearing." This is an in-person hearing before an Administrative Law Judge, similar to a court case. These hearings are *very, very, very rare*. If this exceedingly unlikely event occurs, you should seek further assistance from an attorney *experienced in FCC broadcast matters*. Contact Media Access Project or Microradio Implementation Project for references.

Most likely, the FCC will grant your application, and you will receive a construction permit. Once you receive a construction permit, you will be able to purchase equipment and get your station ready for broadcasting!

*Sample Opposition to Petition to Deny*

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In re Application of )  
 )  
The Colorful Theatrical Arts )  
Corporation, Inc. for an Original ) BNPL-00000000XXX  
LPFM Construction Permit (Form 318) )

**OPPOSITION TO PETITION TO DENY**

This Opposition is filed in response to the Petition to Deny filed by Jaqueline Petitioner on January 15, 2001. The application of Colorful Theatrical Arts Corporation, Inc. ("CTAC") was accepted for filing by the Federal Communications Commission on December 21, 2000, Public Notice Report No. LPFM-S-1.

This Opposition explains that, contrary to the allegation in the Petition to Deny, 75% of the Board of Directors do live within 10 miles of the proposed station transmitter because Sam Jones does not live in New Hampshire as the Petitioner alleges. As shown in the attached affidavit, Mr. Jones owns two homes. His home in New Hampshire is a vacation home that he does not use as his primary residence. The Washington, DC address listed in CTAC's application is, in fact, Mr. Jones's residence. Therefore he does live within 10 miles of the proposed transmitter location and CTAC meets the requirements of a LPFM license.

Respectfully submitted,

/s/

John Paul  
President  
Colorful Theatrical Arts Corporation, Inc.

January 25, 2001

