

upon all parties of record. Such requests shall be granted only upon a showing that the request is based on circumstances wholly beyond the applicant's control which preclude further prosecution of his application.

(c) Subject to the provisions of §§ 73.3523 and 73.3525, any application for minor modification of facilities may, upon request of the applicant, be dismissed without prejudice as a matter of right.

(d) An applicant's request for the return of an application that has been accepted for filing will be regarded as a request for dismissal.

[63 FR 48624, Sept. 11, 1998]

**§ 73.3571 Processing of AM broadcast station applications.**

(a) Applications for AM broadcast facilities are divided into three groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an AM station authorized under this part is any change in community of license or in frequency, except frequency changes to non-expanded band first, second or third adjacent channels. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed. All other changes will be considered minor.

(2) The second group consists of applications for licenses and all other changes in the facilities of authorized stations.

(3) The third group consists of applications for operation in the 1605–1705 kHz band which are filed subsequent to FCC notification that allotments have been awarded to petitioners under the procedure specified in § 73.30.

(b)(1) The FCC may, after acceptance of an application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of §§ 73.3522, 73.3580 and 1.1111 of this chapter pertaining to major changes. Such major modification applications will be dismissed as set forth in paragraph (h)(1)(i) of this section.

(2) An amendment to an application which would effect a major change, as defined in paragraph (a)(1) of this section, will not be accepted except as provided for in paragraph (h)(1)(i) of this section.

(c) An application for changes in the facilities of an existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of said licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(d) If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of an application, the same will be granted. If the FCC is unable to make such a finding and it appears that a hearing may be required, the procedure set forth in § 73.3593 will be followed.

(e) Applications proposing to increase the power of an AM station are subject to the following requirements:

(1) In order to be acceptable for filing, any application which does not involve a change in site must propose at least a 20% increase in the station's nominal power.

(2) Applications involving a change in site are not subject to the requirements in paragraph (e)(1) of this section.

(3) Applications for nighttime power increases for Class D stations are not subject to the requirements of this section and will be processed as minor changes.

(4) The following special procedures will be followed in authorizing Class II-D daytime-only stations on 940 and 1550 kHz, and Class III daytime-only stations on the 41 regional channels listed in § 73.26(a), to operate unlimited-time.

(i) Each eligible daytime-only station in the foregoing categories will receive an Order to Show Cause why its license should not be modified to specify operation during nighttime hours with the facilities it is licensed to start using at local sunrise, using the power stated in the Order to Show Cause, that the Commission finds is the highest nighttime level—not exceeding 0.5 kW—at which the station could operate without causing prohibited interference to

other domestic or foreign stations, or to co-channel or adjacent channel stations for which pending applications were filed before December 1, 1987.

(ii) Stations accepting such modification shall be reclassified. Those authorized in such Show Cause Orders to operate during nighttime hours with a power of 0.25 kW or more, or with a power that, although less than 0.25 kW, is sufficient to enable them to attain RMS field strengths of 141 mV/m or more at 1 kilometer, shall be redesignated as Class II-B stations if they are assigned to 940 or 1550 kHz, and as unlimited-time Class III stations if they are assigned to regional channels.

(iii) Stations accepting such modification that are authorized to operate during nighttime hours at powers less than 0.25 kW, and that cannot with such powers attain RMS field strengths of 141 mV/m or more at 1 kilometer, shall be redesignated as Class II-S stations if they are assigned to 940 or 1550 kHz, and as Class III-S stations if they are assigned to regional channels.

(iv) Applications for new stations may be filed at any time on 940 and 1550 kHz and on the regional channels. Also, stations assigned to 940 or 1550 kHz, or to the regional channels, may at any time, regardless of their classifications, apply for power increases up to the maximum generally permitted. Such applications for new or changed facilities will be granted without taking into account interference caused to Class II-S or Class III-S stations, but will be required to show interference protection to other classes of stations, including stations that were previously classified as Class II-S or Class III-S, but were later reclassified as Class II-B or Class III unlimited-time stations as a result of subsequent facilities modifications that permitted power increases qualifying them to discontinue their "S" subclassification.

(f) Applications for minor modifications for AM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public

Notice listing those applications accepted for filing. Applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

(g) Applications for change of license to change hours of operation of a Class C AM broadcast station, to decrease hours of operation of any other class of station, or to change station location involving no change in transmitter site will be considered without reference to the processing line.

(h) *Processing new and major AM broadcast station applications.* (1)(i) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing AM applications for a new station or for major modifications in the facilities of an authorized station. AM applications for new facilities or for major modifications, whether for commercial broadcast stations or noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be accepted only during these specified periods. Applications submitted prior to the appropriate filing period or "window" opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

(ii) Such AM applicants will be subject to the provisions of §§ 1.2105 and 73.5002 regarding the submission of the short-form application, FCC Form 175, and all appropriate certifications, information and exhibits contained

therein. To determine which AM applications are mutually exclusive, AM applicants must submit the engineering data contained in FCC Form 301 as a supplement to the short-form application. Such engineering data will not be studied for technical acceptability, but will be protected from subsequently filed applications as of the close of the window filing period. Determinations as to the acceptability or grantability of an applicant's proposal will not be made prior to an auction.

(iii) AM applicants will be subject to the provisions of §§ 1.2105 and 73.5002 regarding the modification and dismissal of their short-form applications.

(2) Subsequently, the FCC will release Public Notices:

(i) Identifying the short-form applications received during the window filing period which are found to be mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), as well as the procedures the FCC will use to resolve the mutually exclusive applications;

(ii) Establishing a date, time and place for an auction;

(iii) Providing information regarding the methodology of competitive bidding to be used in the upcoming auction, bid submission and payment procedures, upfront payment procedures, upfront payment deadlines, minimum opening bid requirements and applicable reserve prices in accordance with the provisions of § 73.5002;

(iv) Identifying applicants who have submitted timely upfront payments and, thus, are qualified to bid in the auction.

(3) After the close of the filing window, the FCC will also release a Public Notice identifying any short-form applications received which are found to be non-mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6). All non-mutually exclusive applicants will be required to submit an appropriate long form application within 30 days of the Public Notice and, for applicants for commercial broadcast stations, pursuant to the provisions of § 73.5005(d). Non-mutually exclusive applications for commercial broadcast stations will

be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Non-mutually exclusive applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.7004 and 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the non-mutually exclusive long form application, the same will be granted.

(4)(i) The auction will be held pursuant to the procedures set forth in §§ 1.2101 *et seq.* and 73.5000 *et seq.* Subsequent to the auction, the FCC will release a Public Notice announcing the close of the auction and identifying the winning bidders. Winning bidders will be subject to the provisions of § 1.2107 of this chapter regarding down payments and will be required to submit the appropriate down payment within 10 business days of the Public Notice. Pursuant to § 1.2107 of this chapter and § 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the Public Notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

(ii) These applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest,

convenience and necessity will be served by the granting of the winning bidder's long-form application, a Public Notice will be issued announcing that the construction permit is ready to be granted. Each winning bidder shall pay the balance of its winning bid in a lump sum within 10 business days after release of the Public Notice, as set forth in §§ 1.2109(a) and 73.5003. Construction permits will be granted by the Commission following the receipt of the full payment.

(iii) All long-form applications will be cutoff as of the date of filing with the FCC and will be protected from subsequently filed long-form applications. Applications will be required to protect all previously filed commercial and noncommercial applications. Winning bidders filing long-form applications may change the technical proposals specified in their previously submitted short-form applications, but such change may not constitute a major change. If the submitted long-form application would constitute a major change from the proposal submitted in the short-form application, the long-form application will be returned pursuant to paragraph (h)(1)(i) of this section.

(i) In order to grant a major or minor change application made contingent upon the grant of another licensee's request for a facility modification, the Commission will not consider mutually exclusive applications by other parties that would not protect the currently authorized facilities of the contingent applicants. Such major change applications remain, however, subject to the provisions of §§ 73.3580 and 1.1111. The Commission shall grant contingent requests for construction permits for station modifications only upon a finding that such action will promote the public interest, convenience and necessity.

[63 FR 48625, Sept. 11, 1998, as amended at 64 FR 19501, Apr. 21, 1999; 67 FR 45374, July 9, 2002; 68 FR 26227, May 15, 2003]

**§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.**

(a) Applications for TV stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments.

(2) In the case of Class A TV stations authorized under subpart J of this part and low power TV, TV translator, and TV booster stations authorized under part 74 of this chapter, a major change is any change in:

(i) Frequency (output channel), except a change in offset carrier frequency; or

(ii) Transmitting antenna location where the protected contour resulting from the change is not predicted to overlap any portion of the protected contour based on the station's authorized facilities.

(3) Other changes will be considered minor; provided, until October 1, 2000, proposed changes to the facilities of Class A TV, low power TV, TV translator and TV booster stations, other than a change in frequency, will be considered minor only if the change(s) will not increase the signal range of the Class A TV, low power TV or TV booster in any horizontal direction.

(4) The following provisions apply to displaced Class A TV, low power TV, TV translator and TV booster stations:

(i) In the case of an authorized low power TV, TV translator or TV booster which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 of this chapter or interference with broadcast or other services under § 74.703 or § 74.709 of this chapter, an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1km), will not be considered as an application for a major change in those facilities.

(ii) Provided further, that a low power TV, TV translator or TV booster