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MASS MEDIA BUREAU OFFERS EXAMPLES OF THE
TREATMENT OF APPLICATIONS FILED UNDER THE NEW "ONE STEP"
PROCESS INCLUDING TREATMENT OF CONFLICTS BETWEEN
PETITIONS FOR RULE MAKING TO AMEND PART 73.202 (B)
AND FM NEW AND MAJOR CHANGE APPLICATIONS

On July 13, 1993, the Commission released a Report and Order in MM Docket No. 92-159 amending its rules to permit licensees and permittees of FM stations to request by application upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels.

Applicants will be notified by letter of the resolution of their "one-step" upgrade applications. If an application is granted, the letter will state that the request has been approved effective as of the date of the letter, that the authorization of the station is modified to specify the new channel and/or operating class, and that the authorization will follow under separate cover. The FM Table of Allotments will be amended at a later date, as a purely administrative matter, to reflect the new channel and/or operating class.

Applicants employing the "one-step" process must submit with their applications the filing fee normally charged for minor change applications. In the event that a "one-step" application is treated as a counterproposal in a docketed rule making proceeding and is granted in that proceeding, the applicant will be required to submit the usual upgrade rule making fee at the time it files its application for license to cover the upgrade construction permit.

In order to clarify the practical application of this "one-step" process in conjunction with the Commission's rules governing conflicts between applications and petitions for rule making,¹ the Mass Media Bureau has prepared the following examples. These examples are to serve only as general guidance reflecting the staff's interpretation of the rules, and not as binding precedent. The staff will make specific rulings in response to actual applications on a case-by-case basis. The Mass Media Bureau may issue additional guidelines in the future to reflect our experiences in processing one-step applications.

For further information, contact Victoria M. McCauley, Allocations Branch, Mass Media Bureau, (202) 634-6530; John Grizzle or Ed DeLaHunt, FM Branch, Mass Media Bureau, (202) 632-7166; or Jim Bradshaw, FM Branch, Mass Media Bureau, (202) 632-4504.

¹ See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), recon. granted in part, 8 FCC Rcd 4743 (released July 13, 1993).

Examples

For each example, assume that the following proposals are filed chronologically (but not on the same day) in the order in which they are listed below.² Each example represents a specific scenario involving only the proposals cited in the example. All applications in the examples are "first come/first serve" applications. Therefore, all subsequently filed conflicting applications are held in a queue pending Commission action on the lead application pursuant to 47 C.F.R. Section 73.3573(g) (3). "First come/first serve" applications are thus effectively "cut-off" as to subsequently filed conflicting applications (see note 22). References to grants of applications refer to grants of construction permits, not licenses.

Paragraph and note references in each example correspond to the text of Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, 8 FCC Rcd ____ (released July 13, 1993).

1. Petition for Rule Making V ("Petition V") specifies reference Site V. A Notice of Proposed Rule Making is issued seeking comment on Petition V's proposal and establishing a cut-off date for the filing of counterproposals.
2. Application W requests change of transmitter site to Site W.
3. One-step Application X requests upgrade specifying Site X-1 as the allotment reference site and Site X-2 as the proposed transmitter site.
4. Petition for Rule Making Y ("Petition Y") specifies reference Site Y.
5. Application Z requests change of transmitter site to Site Z.
6. One-step Application Q requests upgrade specifying Site Q-1 as the allotment reference site and Site Q-2 as the proposed transmitter site.

Example 1:

One-step Application X is filed during the period for filing counterproposals to Petition V. Site X-1 is short-spaced to Site V. Site X-2 is fully spaced.

Result: One-step Application X is held in abeyance. The proposal is treated as if it were a counterproposal in Petition V's rule making proceeding. Once the rule making proceeding is terminated, the application will be processed consistent with the outcome of the rule making proceeding. If Petition V prevails in the rule making proceeding, One-step Application X is dismissed without opportunity to amend, as an opportunity to specify a site to remove the conflict will already have been afforded in the context of the rule making proceeding. See Paragraphs 14, 18.

2 Procedures governing conflicts between applications and petitions filed on the same day are stated in Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd at 4919 (1992).

Example 2:

One-step Application X is filed during the period for filing counterproposals to Petition V. Site X-2 is short-spaced to Site V and the application does not propose to protect Site V in accordance with Section 73.215 of the Commission's Rules. Site X-1 is fully spaced.

Result: One-step Application X is held in abeyance. The proposal is treated as if it were a counterproposal in Petition V's rule making proceeding. Once the rule making proceeding is terminated, the application will be processed consistent with the outcome of the rule making proceeding. If Petition V prevails in the rule making proceeding, One-step Applicant X will be given one opportunity to amend to remove the conflict with Petition V. See Paragraph 18.

Example 3:

One-step Application X is filed during the period for filing counterproposals to Petition V. Site X-2 is short-spaced to Site V. Site X-1 is fully spaced. One-step Application X proposes to protect Site V in accordance with Section 73.215 of the Commission's Rules.

Result: One-step Application X will be processed independently of the rule making proceeding. See Paragraph 13.

Example 4:

One-step Application X is filed after the close of the period for filing counterproposals to Petition V. Site X-1 is short-spaced to Site V. Site X-2 is fully spaced.

Result: One-step Application X is held in abeyance until the termination of Petition V's rule making proceeding. Once the rule making proceeding is terminated, the application will be processed consistent with the outcome of the rule making proceeding. If Petition V prevails in the rule making proceeding, One-step Applicant X will be given one opportunity to amend to remove the conflict with Petition V. See Paragraphs 14, 18.

Example 5:

One-step Application X is filed after the close of the period for filing counterproposals to Petition V. Site X-2 is short-spaced to Site V. Site X-1 is fully spaced. One-step Application X does not propose to protect Site V in accordance with the provisions of Section 73.215 of the Rules.

Result: One-step Application X is held in abeyance until the close of Petition V's rule making proceeding. Once the rule making proceeding is terminated, the application will be processed consistent with the outcome of the rule making proceeding. If Petition V prevails in the rule making proceeding, One-step Applicant X will be given one opportunity to amend to remove the conflict with Petition V. See Paragraph 18.

Example 6:

One-step Application X is filed after the close of the period for filing counterproposals to Petition V. Site X-2 is short-spaced to Site V. Site X-1 is fully spaced. One-step Application X proposes to protect Site V in accordance with Section 73.215 of the Rules.

Result: One-step Application X will be processed independently of the rule making proceeding. See Paragraph 13.

Example 7:

Application W and One-step Application X are filed. No rule making petitions are filed. Site X-1 is short-spaced to Site W. Site X-2 is fully spaced.

Result: Application W is cut-off as to One-step Application X. One-step Application X is held in a queue behind Application W. If Application W is granted, One-step Applicant X will be given one opportunity to amend to remove the conflict with Application W. See Paragraph 15.

Example 8:

Application W and One-step Application X are filed. No rule making petitions are filed. Site X-2 is short-spaced to Site W. Site X-1 is fully spaced. One-step Application X does not propose to protect Site W in accordance with the provisions of Section 73.215 of the Rules.

Result: Application W is cut-off as to One-step Application X. One-step Application X is held in a queue behind Application W. If Application W is granted, One-step Applicant X will be given one opportunity to amend to remove the conflict with Application W. See Paragraph 15.

Example 9:

Application W and One-step Application X are filed. No rule making petitions are filed. Site X-2 is short-spaced to Site W. Site X-1 is fully spaced. One-step Application X proposes to protect Site W in accordance with the provisions of Section 73.215 of the Rules.

Result: The applications will be processed independently of each other. See Paragraph 13.

Example 10:

One-step Application X and Petition Y are filed during the period for filing counterproposals to Petition V. Site X-1 is short-spaced to Site V and Site Y.

Result: One-step Application X is held in abeyance. The proposal is treated as if it were a counterproposal in Petition V's proceeding. Application X is cut-off as to Petition Y. Petition Y is dismissed as untimely as to One-step Application X unless Petition Y is amended to remove the conflict with One-step Application X. Once the rule making proceeding is terminated, the application will be processed consistent with the outcome of the rule making proceeding. If Petition V prevails in the rule making proceeding, One-step Application X is dismissed without opportunity to amend, as the opportunity to specify a site to remove the conflict will already have been afforded in the context of the rule making proceeding. See Paragraphs 13, 14, 18.

Example 11:

One-step Application X and Petition Y are filed during the period for filing counterproposals to Petition V. Site X-2 is short-spaced to Site V and Site Y. Site X-1 is fully spaced to Site V and Site Y. One-step Application X does not

to protect Site V in accordance with the provisions of Section 73.215 of the Rules.

Result: One-step Application X is held in abeyance. The proposal is treated as if it were a counterproposal in Petition V's proceeding. One-step Application X is cut-off as to Petition Y. Petition Y is dismissed as untimely as to One-step Application X unless Petition Y is amended to remove the conflict with One-step Application X. Once the rule making proceeding is terminated, the application will be processed consistent with the outcome of the rule making proceeding. If Petition V prevails in the rule making proceeding, One-step Applicant X will be given one opportunity to amend to remove the conflict with Petition V. See Paragraphs 14, 18.

Example 12:

One-step Application X and Petition Y are filed during the period for filing counterproposals to Petition V. Site X-2 is short-spaced to Site V and Site Y. Site X-1 is fully spaced to Site V and Site Y. Application X proposes to protect Site V in accordance with the provisions of Section 73.215 of the Rules.

Result: One-step Application X is processed independently of the rule making proceeding. One-step Application X is cut-off as to Petition Y. Petition Y is dismissed as untimely as to One-step Application X unless Petition Y is amended to remove the conflict with One-step Application X. See Paragraphs 13, 18.

Example 13:

One-step Application X and Application Z are filed. No rule making petitions are filed. Site Z is short-spaced to Site X-1, but clears Site X-2.

Result: One-step Application X is cut-off as to Application Z. Application Z is held in a queue behind One-step Application X. If One-step Application X is granted, Application Z is granted, as allotment reference site X-1 no longer requires protection. See Paragraphs 13, 14, 15.

Example 14:

One-step Application X and Application Z are filed. No rule making petitions are filed. Site Z clears Site X-1, but is short-spaced to Site X-2. Application Z does not propose to protect Site X-2 in accordance with the provisions of Section 73.215 of the Rules.

Result: One-step Application X is cut-off as to Application Z. Application Z is held in a queue behind One-step Application X. If One-step Application X is granted, Applicant Z will be given one opportunity to amend to remove the conflict with site X-2. See Paragraphs 14, 15.

Example 15:

One-step Application X and Application Z are filed. No rule making petitions are filed. Site Z clears Site X-1, but is short-spaced to Site X-2. Application Z proposes to protect Site X-2 in accordance with the provisions of Section 73.215 of the Rules.

Result: The applications are processed independently of each other. See Paragraph 13.

Example 16:

One-step Application X and One-step Application Q are filed. No rule making petitions are filed. Site Q-2 is short-spaced to site X-1 but fully spaced as to Site X-2. Site Q-1 is fully spaced to Site X-1 and Site X-2. One-step Application Q does not propose to protect Site X-1 in accordance with the provisions of Section 73.215 of the Rules.

Result: One-step Application X is cut-off as to One-step Application Q. One-step Application Q is held in a queue behind One-step Application X. If Application X is granted, One-step Application Q is granted, as allotment reference site X-1 no longer requires protection. See Paragraphs 13, 14,

Example 17:

One-step Application X and One-step Application Q are filed. No rule making petitions are filed. Site Q-2 is short-spaced to Site X-1 but fully spaced to Site X-2. Site Q-1 is fully spaced to Site X-1 and Site X-2. One-step Application Q proposes to protect Site X-1 in accordance with the provisions of Section 73.215 of the Rules.

Result: The applications are processed independently of each other. See Paragraph 13.

Example 18:

One-step Application X and One-step Application Q are filed. No rule making petitions are filed. Site Q-2 is short-spaced to site X-2 but fully spaced as to Site X-1. Site Q-1 is fully spaced to Site X-1 and Site X-2. One-step Application Q does not propose to protect Site X-2 in accordance with the provisions of Section 73.215 of the Rules.

Result: One-step Application X is cut-off as to One-step Application Q. One-step Application Q is held in a queue behind One-step Application X. If Application X is granted, One-step Applicant Q will be given one opportunity to amend to remove the conflict with Site X-2. See Paragraphs 14, 15.

Example 19:

One-step Application X and One-step Application Q are filed. No rule making petitions are filed. Site Q-2 is short-spaced to Site X-2 and fully spaced as to Site X-1. Site Q-1 is fully spaced to Site X-1 and Site X-2. One-step Application Q proposes to protect Site X-2 in accordance with the provisions of Section 73.215 of the Rules.

Result: The applications are processed independently of each other. See Paragraph 13.

Example 20

One-step Application X is filed. No rule making petitions or conflicting applications have been filed. Site X-1 specifies a theoretical allotment reference site that provides less than 100% city grade coverage to the community of license.

Result: The application is not acceptable for consideration. All applicants

using the one-step process must demonstrate that a suitable theoretical allotment reference site exists which would comply with allotment standards with respect to minimum distance separation and city-grade coverage. The applicant will be given one opportunity to submit a curative amendment pursuant to Section 73.3522(a)(6) of the Rules. See Paragraph 13.

Example 21:

One-step Application X is filed within the Canadian Border Zone. Sites X-1 and X-2 are fully spaced domestically. Site X-1 does not comply with the provisions of the U.S.A.-Canadian Broadcasting Agreement.

Result: The application is unacceptable for filing. One-step Applicant X will be afforded one opportunity to amend to resolve the conflict. See Paragraph 14.

-- FCC