

which would be directly mutually exclusive with the pending application may be filed by the same applicant or by any applicant in which any individual in common with the pending application has any interest, direct or indirect, except that interests or less than 1% will not be considered.

[52 FR 31400, Aug. 20, 1987]

§ 73.3522 Amendment of applications.

(a) *Broadcast services subject to competitive bidding.* (1) Applicants in all broadcast services subject to competitive bidding will be subject to the provisions of §§ 73.5002 and 1.2105(b) regarding the modification of their short-form applications.

(2) Subject to the provision of § 73.5005, if it is determined that a long form application submitted by a winning bidder or a non-mutually exclusive applicant for a new station or a major change in an existing station in all broadcast services subject to competitive bidding is substantially complete, but contains any defect, omission, or inconsistency, a deficiency letter will be issued affording the applicant an opportunity to correct the defect, omission or inconsistency. Amendments may be filed pursuant to the deficiency letter curing any defect, omission or inconsistency identified by the Commission, or to make minor modifications to the application, or pursuant to § 1.65. Such amendments should be filed in accordance with § 73.3513. If a petition to deny has been filed, the amendment shall be served on the petitioner.

(3) Subject to the provisions of §§ 73.3571, 73.3572 and 73.3573, deficiencies, omissions or inconsistencies in long-form applications may not be cured by major amendment. The filing of major amendments to long-form applications is not permitted. An application will be considered to be newly filed if it is amended by a major amendment.

(4) Paragraph (a) of this section is not applicable to applications for minor modifications of facilities in the non-reserved FM broadcast service, nor to any application for a reserved band FM station.

(b) *Reserved Channel FM and reserved noncommercial educational television sta-*

tions. Applications may be amended after Public Notice announcing a period for filing amendments. Amendments, when applicable, are subject to the provisions of §§ 73.3514, 73.3525, 73.3572, 73.3573, 73.3580, and § 1.65 of this chapter. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration. Amendments will be accepted as described below and otherwise will only be considered upon a showing of good cause for late filing or pursuant to § 1.65 of this chapter or § 73.3514:

(1) A § 73.7002 Selectee. A Public Notice will announce that the application of a § 73.7002 Selectee (selected based on fair distribution) has been found acceptable for filing. If any Selectee's application is determined unacceptable the application will be returned and the Selectee will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor and must not alter the § 73.7002 preference.

(2) A § 73.7003 Tentative Selectee. A Public Notice will announce that the application of a § 73.7003 Tentative Selectee (selected through a point system) has been found acceptable for filing. If any Tentative Selectee's application is determined unacceptable the application will be returned and the Tentative Selectee will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor and must claim the same number of qualitative points as originally claimed, or more points than claimed by the applicant with the next highest point total.

(3) A Public Notice will identify all other reserved channel applications, such as non-mutually exclusive applications and the sole remaining application after a settlement among mutually exclusive applications. If any such application is determined unacceptable the application will be returned and the applicant will be provided one opportunity for curative amendment by

filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor.

(c) Minor modifications of facilities in the non-reserved FM broadcast service.

(1) Subject to the provisions of §§ 73.3525, 73.3573, and 73.3580, for a period of 30 days following the FCC's issuance of a Public Notice announcing the tender of an application for minor modification of a non-reserved band FM station, (other than Class D stations), minor amendments may be filed as a matter of right.

(2) For applications received on or after August 7, 1992, an applicant whose application is found to meet minimum filing requirements, but nevertheless is not complete and acceptable, shall have the opportunity during the period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff. [For minimum filing requirements see § 73.3564(a). Examples of tender defects appear at 50 FR 19936 at 19945-46 (May 13, 1985), reprinted as Appendix D, Report and Order, MM Docket No. 91-347, 7 FCC Rcd 5074, 5083-88 (1992). For examples of acceptance defects, see 49 FR 47331.] Prior to the end of the period specified in the deficiency letter, a submission seeking to correct a tender and/or acceptance defect in an application meeting minimum filing requirements will be treated as an amendment for good cause if it would successfully and directly correct the defect. Other amendments submitted prior to grant will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514.

(3) Unauthorized or untimely amendments are subject to return by the Commission without consideration. However, an amendment to a non-reserved band application will not be accepted if the effect of such amendment is to alter the proposed facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment application. Similarly, an applicant subject to "first come/first

serve" processing will not be permitted to amend its application and retain filing priority if the result of such amendment is to alter the facility's coverage area so as to produce a conflict with an applicant which files subsequent to the initial applicant but prior to the amendment.

NOTE 1 TO § 73.3522: When two or more broadcast applications are tendered for filing which are mutually exclusive with each other but not in conflict with any previously filed applications which have been accepted for filing, the FCC, where appropriate, will announce acceptance of the earliest tendered application and place the later filed application or applications on a subsequent public notice of acceptance for filing in order to establish a deadline for the filing of amendments as a matter of right for all applicants in the group.

[63 FR 48623, Sept. 11, 1998, as amended at 65 FR 36378, June 8, 2000]

§ 73.3523 Dismissal of applications in renewal proceedings.

(a) An applicant for construction permit, that has filed an application that is mutually exclusive with an application for renewal of a license of an AM, FM or television station (hereinafter competing applicant") filed on or before May 1, 1995, and seeks to dismiss or withdraw its application and thereby remove a conflict between applications pending before the Commission, must obtain the approval of the Commission.

(b) If a competing applicant seeks to dismiss or withdraw its application prior to the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of any written agreement related to the dismissal or withdrawal of its application, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in exchange for dismissing or withdrawing its application;

(2) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and