

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Radio Goldfield Broadcast, Inc.)	File No. BSTA-20061206AFZ
)	
Special Temporary Authorization for KGFN-LP)	
Goldfield, Nevada)	
(Facility ID # 170355))	

To: Audio Division, Media Bureau

PETITION FOR RECONSIDERATION

Leventhal Senter & Lerman PLLC, which represents numerous entities which hold radio broadcast licenses, pursuant to 47 C.F.R. § 1.106, hereby seeks reconsideration of the Commission’s grant to Radio Goldfield Broadcast, Inc. (“RGB”)¹ of the above-captioned special temporary authority (“STA”) to operate a low power FM (“LPFM”) facility serving Goldfield, Nevada, issued January 29, 2007. The STA authorizes Rodney D. Moyes, an individual who previously operated a “pirate” FM station – one operating at levels exceeding the allowable unlicensed limits without FCC authority – to operate his former Goldfield facility as a low power FM station. Such authorization is directly contrary to the low power FM rules. The STA grant should be reconsidered and reversed. In support whereof, the following is shown.

Reconsideration is appropriate in this instance. The clear language of the Commission’s rules prohibits the Commission from granting any application, including one for temporary operation, to an LPFM applicant who has operated a pirate radio station.² The issuance of the

¹ Although the STA grant refers to “Radio Goldfield Broadcast, Inc.,” the STA request was signed in the name of “Radio Goldfield Broadcasters Inc.,” while FCC Form 318 and the corporate charter refer to “Radio Goldfield Broadcast Inc.”

² 47 C.F.R. § 73.854.

temporary authorization in this case undermines the licensing qualifications for LPFM radio station licensees and potential licensees. Because the STA request was not made public until after its approval, there was no prior opportunity for participation in this proceeding.

As part of its proceeding creating a low power radio service, the Commission considered the effect of past illegal unlicensed broadcast operations upon an applicant's character qualifications.³ In promulgating § 73.854, the Commission stated that "the illegality of unauthorized broadcasting must now be presumed to be well-known, and any unlicensed broadcast operation occurring more than 10 days after the *Notice [of Proposed Rule Making]* was issued [in the Federal Register] will make the applicant ineligible for low power, full power, or any other kind of license and will be subject to fines, seizure of their equipment, and criminal penalties."⁴ When adopted, § 73.854 required LPFM applicants to certify that they had not previously engaged in the unlicensed operation of any station, or that, if they had, they had either: "(1) ceased voluntarily no later than February 26, 1999 [that is, 10 days after publication of the *Notice* in the Federal Register], without direction from the FCC to do so; or (2) ceased operation within 24 hours of being directed by the FCC to terminate unlicensed operation of any station."⁵

After the rule was adopted, members of Congress criticized the Commission for allowing any pirate broadcaster to obtain operating authority. In introducing a bill that would entirely repeal the Commission's LPFM rules, Senator Judd Gregg stated that making former "pirate" radio operators eligible for LPFM licenses "re-enforces their unlawful behavior and encourages

³ See, e.g., *Creation of a Low Power Radio Service, Notice of Proposed Rulemaking*, 14 FCC Rcd 2471, 2497-2498 (1999).

⁴ *Creation of Low Power Radio Service, Report and Order*, 15 FCC Rcd 2205, 2227 (2000) (emphasis supplied).

⁵ *Id.* at 2300.

future illegal activity by opening the door to new unauthorized broadcasters.”⁶ The House Committee on Commerce found “that the operation of an unlicensed station demonstrates a lack of commitment to follow the basic rules and regulations which are essential to having a broadcast service that serves the public, and those individuals or groups should not be permitted to receive licenses in the LPFM service.”⁷

Thereafter, the Commission modified § 73.854 to clarify that no unlicensed broadcaster who continued illegally broadcasting after February 26, 1999 would be eligible for an LPFM license.⁸ This codified the Commission’s intention that neither exception to the general prohibition of granting an LPFM license to a former pirate operator would apply to a pirate who continued broadcasting without a license 10 days after publication of the *Notice* in the Federal Register. Ultimately, Congress passed and President Clinton signed into law a requirement that the Commission modify its LPFM rules to “prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).”⁹

Revised and in effect at the filing of RGB’s request for STA, § 73.854 of the Commission’s rules provides that “[n]o application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, that neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups,

⁶ 146 Cong. Rec. S613-02 (daily ed. February 10, 2000).

⁷ H.R. Rep. No. 106-567, 106th Cong., at 8 (2000).

⁸ *Creation of Low Power Radio Service, Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 19208, 19245 (2000) (“*Memorandum Opinion and Order on Reconsideration*”).

⁹ Pub. L. No. 106-553, § 632(a)(1)(B), 114 Stat. 2762 (2000). *See also, Creation of a Low Power Radio Service, Second Report and Order*, 16 FCC Rcd 8026, 8030 (2001) (stating that “the Act requires the Commission to modify its rules”).

organizations or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301.” This rule became effective on June 11, 2001, and it remains in effect. What constitutes an “application” is defined by § 73.3511 of the rules, which is applicable to the LPFM service under § 73.801 of the rules. Under § 73.3511(a), a “formal application” is “any request for authorization where an FCC form for such request is prescribed,” and under § 73.3511(b), an “informal application” is “all other written requests for authorization,” which includes an STA. Thus, RGB made a written request for STA to operate in the LPFM service by way of an “application.”

RGB cannot correctly certify as required under § 73.854, for it is undisputed that the prior operation of RGB exceeded the permitted limits for unlicensed operation of a radio station. After receiving a complaint of an unlicensed broadcast radio station in Goldfield, Nevada, agents from the San Francisco office of the Western Region of the Enforcement Bureau confirmed the complaint through direction finding techniques, and subsequently shut down RGB in June 2006 for operation without a license. Mr. Moyes was served with a Notice of Unlicensed Radio Operation on June 10, 2006, and following his response of a Notice of Complaint and Notice of Petition, Mr. Moyes received another Notice of Unlicensed Operation dated August 1, 2006.¹⁰

RGB subsequently filed an STA request, along with a waiver request to file an application to operate in the LPFM service until an LPFM filing window opens. RGB submitted the March 2000 version of FCC Form 318 as part of its STA request, but that version is outdated: it permits an applicant to certify in response to Section II Question 8 that it either has not engaged in the unlicensed operation of any station, or that it ceased such operation voluntarily prior to February 26, 1999 or within 24 hours of being directed by the Commission to do so.

¹⁰ See *Notice of Unlicensed Operation*, Document No. W20063296020 (Enf. Bur., Western Region, San Francisco Office, released August 1, 2006).

These last two representations were eliminated from the Commission's rules in 2001, as explained above. RGB claimed in the application that it ceased unlicensed operation within 24 hours of being directed by the Commission to do so. The updated version of Form 318, however, attached hereto, comports with the current version of the rule and requires an applicant to certify in Section II Question 8 that it has not engaged in the unlicensed operation of any station, and it does not include either of the two former exceptions to this general prohibition.

That an outdated version of Form 318 was used by RGB does not alter the ultimate legal conclusion, however. And, in any event, RGB, and its principal Mr. Moyes, were and are subject to, and charged with constructive knowledge of, the provisions of § 73.854 as they existed at the time RGB's STA request was filed and considered,¹¹ regardless of the questions asked in Form 318 as submitted.¹²

RGB's STA request was granted pursuant to Section 309(f) of the Communications Act of 1934, under which the Commission may grant an STA if there are "extraordinary circumstances requiring temporary authorizations in the public interest." The programming which RGB identifies cannot be deemed to represent an "extraordinary circumstance." If it did, any former pirate radio operator who previously broadcast programming such as weather reports, Sunday religious services, or information pertaining to local law enforcement, public safety, and school activities, would be able to claim that he or she is entitled to receive operating authority for an LPFM station.

¹¹ See 47 C.F.R. § 0.406 ("Persons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business").

¹² See, e.g., *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, 14 FCC Rcd 18756, 18786 (1999) (stating, "to the extent that the instructions for the current version of the FCC Form 465 state that nursing homes that are 'part of a not-for-profit hospital or rural health care clinic' are health care providers eligible to receive support, those instructions are incorrect").

The Commission has the authority under § 1.3 of the rules to grant a waiver of “[a]ny provision of the rules...on its own motion or on petition if good cause therefor is shown.” But RGB’s waiver request did not in any way address RGB’s failure to meet the strict character qualifications standard of § 73.854. Instead, the request focused only on the nature of the programming that RGB would broadcast. It is not surprising, therefore, that the STA grant did not address in any manner the effect of RGB’s former “pirate” operation or the appropriateness of a waiver of the absolute prohibition of § 73.854 in this instance.

Even if RGB had properly requested, and the Commission had directly addressed, the need for a waiver of § 73.854, such a waiver should not have been granted here because of the adverse precedent that the grant establishes. Failure to apply the restrictions of § 73.854 to RGB frustrates the purpose of the rule, which was specifically endorsed by Congress and rests upon the Commission’s “concern that past illegal broadcast operations reflect on the entity’s proclivity to deal truthfully with the Commission and to comply with [its] rules and policies.”¹³ By granting an STA to RGB, the Commission has effectively eviscerated § 73.854, such that former operators of “pirate” radio stations may now seek to obtain authority to operate lawfully in the LPFM service premised upon a simple commitment to carry local public interest programming. This is a complete reversal of prior Commission policy, and it has been undertaken without any notice or opportunity to comment.

¹³ *Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd at 19245.

CONCLUSION

For the foregoing reasons, the STA grant should be reconsidered and reversed.

Respectfully submitted,

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INSTRUCTIONS FOR FCC FORM 318

APPLICATION FOR CONSTRUCTION PERMIT FOR A LOW POWER FM BROADCAST STATION

GENERAL INSTRUCTIONS

Introduction

A. This form, together with the associated instructions and worksheets, are designed to provide you with sufficient information to permit you to fully and accurately complete an application for a construction permit for a low power FM ("LPFM") station. Ultimately, however, if you are awarded a construction permit and license for a new LPFM station, you will be required to know and comply with all of the Commission's rules and policies applicable to the LPFM service.

B. FCC Form 318 is used to apply for authority to construct a new LPFM broadcast station, to make changes in an authorized LPFM broadcast station, or to amend a pending Form 318 application. This application for a construction permit is the first step in the licensing process. Following completion of station construction you must file a separation application for an FCC license, FCC Form 319. Applications for new stations and major change proposals must be filed during a window filing period announced by the Commission by public notice. All proposals for minor changes to LPFM authorizations are also to be filed on this form. See 47 C.F.R. Section 73.870. The application consists of the following sections:

- I. General Information
- II. Legal Information
- III. Point System Factors
- IV. Certification
- V. LPFM Engineering Data and Preparer's Certification (for preparer of engineering sections of the application)

All applicants must complete Sections I, II, IV, and V. In Section II, however, applicants for major and minor changes in authorized stations need fill out only Questions 1, 4, 6, 7, and 9.

C. This form makes many references to the Commission's rules. Applicants should have on hand and be familiar with current broadcast rules in Title 47 of the Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 73 "Radio Broadcast Services"

Copies of the Commission's rules may be purchased from the Government Printing Office. Current prices may be obtained from the GPO Customer Service Desk at (202) 512-1803. For payment by credit card, call (202) 512-1800, M-F, 8 a.m. to 4 p.m. e.s.t.; facsimile orders may be placed by dialing (202) 518-2233, 24 hours a day. Payment by check may be made to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954.

In addition, any rule in Title 47, including the LPFM rules in Part 73, may be retrieved by rule section number via the Commission's World Wide Web site. Applicants may locate any rule in Parts 0, 1, and 73 at <http://www.fcc.gov/mb/asd/bickel/47CFRrule.html>.

D. **Electronic Filing of Application Forms.** Applicants must file Form 318 electronically. The Commission has developed an electronic version of this form that is available on the Commission's Web site. Each applicant filing electronically will benefit from "error checks" in the Form 318 computer software and obtain immediate confirmation of the receipt of its application by the Commission. The electronic version of this form can be accessed through the Consolidated Database System (CDBS) online electronic forms filing system, located at the following site: <http://www.fcc.gov/mb>. Electronic filing instructions are available in the CDBS User's Guide. The Guide can be accessed from the MB web site, above, by clicking on the "CDBS" link. This action will take the user to the Media Bureau CDBS Electronic Filing System site. The user should then click on the "Go to CDBS User's Guide" link. Applicants may find it useful to download and print a copy of the Guide for easy reference during application preparation. Internet access to the CDBS online electronic forms filing system requires, at a minimum, a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later.

E. **Electronic or Paper Filing of Amendments.** Amendments to previously filed applications should be prepared, signed, and filed in the same manner as the original application, and should contain the following information to identify the associated application:

- (1) Applicant's name;
- (2) Call letters, or specify "NEW";
- (3) Proposed channel number;
- (4) Proposed station location;
- (5) File number of application being amended (if known); **and**
- (6) Date of filing of application being amended (if file number is unknown).

F. **Defective Applications.** Applicants should provide all information requested by this application. If any portions of the application are not applicable, the applicant should so state. **Defective or incomplete applications will be returned without consideration.** If the FCC inadvertently accepts a defective or incomplete application, that application may be dismissed. See 47 C.F.R. Section 73.3564(b).

G. **Current Information.** In accordance with 47 C.F.R. Section 1.65, applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and material changes in the information furnished in this application. This requirement continues until the Commission action on this application is no longer subject to reconsideration by the Commission or review by any court.

Certifications

H. This application requires applicants to certify compliance with various statutory and regulatory requirements. Detailed instructions and three worksheets provide additional information regarding Commission rules and policies. These materials are designed to track the standards and criteria which the Commission applies to determine compliance and to increase the reliability of applicant certifications. While applicants are required to review all application instructions and worksheets, they generally are not required to complete or retain any documentation created or collected to complete the application. Applicants claiming a point for established community presence in response to Section III, Question 1, however, must document their claims as explained further in the instructions for that section.

I. This application is presented primarily in a "Yes/No" certification format. However, it contains places for submitting explanations and exhibits where necessary or appropriate. Each certification, explanation and exhibit constitutes a material representation. Applicants may only

mark the "Yes" certification when they are certain that the response is correct. A "No" response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. A "No" response to a certification question for which an exhibit can be submitted will not cause the immediate dismissal of the application, provided that an appropriate exhibit is completed. However, the application includes several certifications for which an explanatory exhibit cannot be submitted. These include Section II, question 1 (Certification), Question 2 (Eligibility), Question 4 (Community-Based Criteria) and Question 8 (Unlicensed Operation). **An applicant's failure to respond "Yes" to at least one certification contained in each of these questions will result in the return of its application with no opportunity to file a curative amendment.**

J. The applicant or the applicant's authorized legal representative, if any, must sign the application. Depending on the nature of the applicant, the application should be signed as follows: if a corporation, by an officer; if an unincorporated association, by a member who is an officer (for an unincorporated educational institution, this could be a school superintendent, officer of the school board, or a university officer); if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the application for his or her client, but only in cases of the applicant's disability or absence from the United States. If the application is filed electronically, the signature will consist of the electronic equivalent of the typed name of the individual.

SECTION I: GENERAL INFORMATION

A. **Question 1: Applicant Name, etc.** The name of the applicant stated in Question 1 shall be the exact name of the agency, board, institution, organization, corporation or association seeking the authorization. Do not list the name of an individual. Individuals are not eligible for LPFM licenses. The name of the applicant must be stated exactly in Question 1. In all other sections of this form, an abbreviated name can be used to identify the applicant.

State Abbreviation

Applicants should use only those State abbreviations approved by the U.S. Postal Service.

Facility ID Number

The FCC assigns a unique facility identification number to all authorized broadcast stations. **New station applicants should leave this box blank.** Applicants for

minor or major changes can obtain facility ID numbers for their authorized LPFM stations at the Commission's World Wide Web site at www.fcc.gov/mb. Once at this website, scroll down and select CDBS Public Access. You can also obtain your facility ID number by calling (202) 418-2700. Further, the facility ID number is included on all Commission authorizations and postcards.

- B. **Question 2: Contact Representative.** If the applicant is represented by a representative or agent (for example, legal counsel), that person's name, firm or company, and telephone/electronic mail address may be specified here, at the applicant's option.
- C. **Question 3: Application Purpose.** This question requires that the applicant identify the purpose of the application and provide certain information for the facilities proposed in the FCC Form 318. Applicants for a new LPFM station should check "New Station." Applicants updating information on a previously filed but not yet granted application for a new LPFM station should check "Amendment to pending application."

SECTION II: LEGAL INFORMATION

- A. **Question 1: Certification.** Each applicant is responsible for the information that the application instructions and worksheets convey. The Commission's licensing processes are premised on the accuracy and reliability of applicant certifications. Thus, each applicant must carefully review all instructions and worksheet materials prior to completing this application.
- B. **Question 2: Eligibility.** Applicants for new LPFM stations must certify their eligibility to own and operate an LPFM station under Commission rules and regulations. Each applicant must check one "Yes" box for this question and must check the other two boxes "No." An applicant should not submit an explanatory exhibit in connection with its Question 2 "No" response. An applicant that answers "Yes" to certification 2a, 2b or 2c must submit with its application an exhibit that describes the applicant's educational program and how its proposed station will be used to advance its educational program, as set forth in more detail below. Or, in the case of a Public Safety Radio facility, the applicant must describe how the proposed station will protect the safety of life, health, or property. The exhibit also should include the State and date of the applicant's incorporation.

Subsections 2(a) and 2(b)—Noncommercial Educational ("NCE") Applicants. An applicant may be eligible for an LPFM station authorization under Section 73.503 of the Commission's rules, which provides that "a

noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program." The three basic NCE eligibility requirements are: (1) nonprofit organization; (2) an educational goal or purpose; and (3) use of station programming to further that educational purpose. In considering these requirements, emphasis is placed on proposed station programs which are clearly educational in nature, *i.e.*, actually involve teaching or instruction, whether for formal credit or not. However, it is not necessary that the proposed station's programming be exclusively or even primarily educational in nature.

Subsection 2(a): Nonprofit Educational Institutions. An institutional NCE applicant is either a public entity (such as a governmental agency) or a private, nonprofit entity which operates a *bona fide*, full-time school in the community where it proposes to operate. Under the Commission's standards, these applicants generally are presumed to have an educational purpose, and need only demonstrate how their proposed station programming will be used to advance their educational purpose. Applicants should provide detailed descriptions of the nature of their proposed station programming and, if possible, program schedules. Applicants accredited by State departments of education or recognized by regional and/or national accrediting organizations should identify the accrediting entities. Applicants also should identify the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Applicants must be prepared to furnish supporting documentation for their statements upon request by the Commission staff.

Subsection 2(b): Nonprofit Educational Organizations. Organizational NCE applicants are private, nonprofit entities such as nonprofit foundations, corporations or associations. Individuals cannot qualify as organizational applicants. Under the Commission's standards, these applicants must demonstrate both that they have an educational purpose and how their proposed station programming will be used to advance that purpose. Applicants should provide detailed descriptions of the nature of their proposed station programming and, if possible, program schedules. Applicants also should identify the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Applicants must be prepared to furnish supporting documentation for their statements upon request by the Commission staff.

Subsection 2(c): Public Safety Radio Service. Applicants also may be eligible for an LPFM station authorization because the station proposes to provide public safety radio services under Section 309(j)(2)(A) of the Communications Act of 1934, as amended, 47 U.S.C.

Section 309(j)(2)(A). In order to qualify under this provision, an applicant must not be organized for profit, must use the proposed LPFM station for public safety radio services to protect the safety of life, health, or property, and the services must not be made commercially available to the public. 47 U.S.C. Section 309(j)(2)(A); *see also* 47 C.F.R. Sections 90.17, 90.23, and 90.27.

C. **Question 3: Parties to the Application.** This question is designed to identify all individuals who may be subject to various FCC ownership rules and related statutory restrictions. Specifically, as used in this application, the term "party to the application" includes any individual or entity whose ownership or positional interest in the applicant is "attributable." An "attributable interest" is an ownership interest in or relation to an applicant or licensee which will give its holder that degree of influence or control over the applicant or licensee sufficient to implicate the Commission's multiple ownership rules. The Commission's policies and standards for attribution are set forth below. You will be answering questions about those individuals and entities listed in response to Question 3 when you respond to various other questions.

Non-Stock Corporations or Other Non Stock Entities

The applicant, the parent and subsidiary entities of the applicant, and the officers, directors, and governing board members of the applicant and its parent and subsidiary entities are considered to be parties to the application, with the exceptions provided by 47 C.F.R. Section 73.858, which are set forth below.

Partnerships and Limited Partnerships

Partners and non-insulated limited partners are considered to be parties to the application. A limited partner in a limited partnership is considered to be insulated if the limited partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership, and the applicant so certifies in response to subsection b of Question 3. Sufficient insulation of a limited partner for purposes of this certification is assured if the limited partnership agreement:

- (1) specifies that any exempt limited partner (if not a natural person, its directors, officers, partners, etc.) cannot act as an employee of the limited partnership if his or her functions, directly or indirectly, relate to the media enterprises of the company;
- (2) bars any exempt limited partner from serving, in any material capacity, as an independent contractor or agent with respect to the partnership's media enterprises;

- (3) restricts any exempted limited partner from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business;
- (4) empowers the general partner to veto any admissions of additional general partners admitted by vote of the exempt limited partners;
- (5) prohibits any exempt limited partner from voting on the removal of a general partner or limits this right to situations where the general partner is subject to bankruptcy proceedings, as described in Sections 402 (4)-(5) of the Revised Uniform Limited Partnership Act, is adjudicated incompetent by a court of competent jurisdiction, or is removed for cause, as determined by an independent party;
- (6) bars any exempt limited partner from performing any services to the limited partnership materially relating to its media activities, with the exception of making loans to, or acting as a surety for, the business; and
- (7) states, in express terms, that any exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership.

Notwithstanding conformance of the partnership agreement to these criteria, however, the requisite certification cannot be made if the applicant has actual knowledge of a material involvement of a limited partner in the management or operation of the media-related businesses of the partnership. In the event that the applicant cannot certify as to the noninvolvement of a limited partner, the limited partner will be considered as a party to this application.

Limited Liability Companies

The Commission treats an LLC as a limited partnership, each of whose members is considered to be a party to the application. However, where an LLC member is insulated in the manner specified above with respect to a limited partnership and where the relevant state statute authorizing the LLC permits an LLC member to insulate itself in accordance with the Commission's criteria, that LLC member is not considered a party to the application. In such a case, the applicant should certify "Yes" in response to Section II, Question 3b.

Stock Corporations

The Commission's multiple ownership attribution policies and standards apply to LPFM applicants and licensees that are stock corporations, with the exceptions provided by 47 C.F.R. Section 73.858, which are set forth below.

Generally, the applicant, the parent and subsidiary entities of the applicant, the officers, directors, and governing board members of the applicant and its parent and subsidiary entities, and holders of voting stock interests in the applicant of 5 percent or more are considered to be parties to the application.

a. Voting stock interests. Voting stock interests of 5 percent or more of the issued and outstanding voting stock of the applicant are attributable, unless the interest is passive in nature, in which case voting stock interests of 20 percent or more are attributable. Worksheet 1b entitled “Non-Party Influence Over Applicant” is provided to help determine whether an interest is passive in nature for purposes of the Commission’s attribution policies and standards. Where the 5 percent stock owner is itself a corporation, each of its stockholders, directors and “executive” officers (president, vice-president, secretary, treasurer or their equivalents) is considered a party to this application **UNLESS** the applicant submits as an exhibit a statement establishing that an individual director or officer will not exercise authority or influence in areas that will affect the applicant or the station. In this statement, the applicant should identify the individual by name and title, describe the individual’s duties and responsibilities, and explain the manner in which such individual is insulated from the corporate applicant and should not be attributed an interest in the corporate applicant or considered a party to this application. In addition, a person or entity holding an ownership interest in the corporate stockholder of the applicant is considered a party to this application **ONLY IF** that interest, when multiplied by the corporate stockholder’s interest in the applicant, would account for 5% or more of the issued and outstanding voting stock of the applicant. For example, where Corporation X owns stock accounting for 25% of the applicant’s votes, only Corporation X shareholders holding 20 percent or more of the issued and outstanding voting stock of Corporation X have a 5% or more indirect interest in the applicant (.25 x .20 = .05) and, therefore, are considered parties to this application. In applying the multiplier, any entity holding more than 50% of its subsidiary will be considered a 100% owner. Where the 5% stock owner is a partnership, each general partner and any limited partner that is non-insulated, regardless of the partnership interest, is considered a party to the application.

Stock subject to stockholder cooperative voting agreements accounting for 50% or more of the votes in a corporate applicant will be treated as if held by a single entity and any stockholder holding 5% or more

of the stock in that block is considered a party to this application.

An investment company, insurance company or trust department of a bank is not considered a party to this application, and an applicant may properly certify that such entity’s interest is non-attributable, **IF** its aggregated holding accounts for less than 20% of the outstanding votes in the applicant **AND IF**:

- (1) such entity exercises no influence or control over the corporation, directly or indirectly; and
- (2) such entity has no representatives among the officers and directors of the corporation.

b. Non-voting stock and debt interests. Non-voting stock and debt interests may be attributable under the Commission’s “equity-debt-plus” (“EDP”) attribution standard. Under the **EDP** standard, the interest held, aggregating both equity and debt, must exceed 33% of the total asset value (all equity plus all debt) of the applicant, a broadcast station licensee, cable television system, daily newspaper or other media outlet subject to the Commission’s broadcast multiple ownership rules **AND** the interest holder must either hold an attributable interest in a media outlet in the same market or supply over 15% of the total weekly broadcast programming hours of the station in which the interest is held. For example, if a full-power broadcaster were to invest in an LPFM applicant and the investment accounted for more than 33 percent of the LPFM applicant’s total capitalization, the investment would be attributable and would violate the cross-ownership prohibition of 47 C.F.R. Section 73.860 of the Commission’s rules, which is discussed below in the Instructions to Section II, Question 5. Similarly, if a director of the same full-power broadcaster were to act as an officer of the LPFM applicant, the director would be attributed with both stations and Section 73.860 would be violated.

Exceptions

Section 73.858 of the Commission’s rules establishes two exceptions to the above-stated attribution policies and standards applicable to LPFM station applicants. **Applicants relying on either of these attribution exceptions should answer question 5b “No” and provide an explanatory exhibit.**

a. Section 73.858(a). Under this provision, members of the board of directors of the parent of an LPFM applicant or licensee may hold otherwise attributable interests in a broadcast licensee, daily newspaper or

cable television system subject to the Commission's multiple ownership rules and not have those interests attributed to them for purposes of an LPFM station application, **provided that** the board members holding such interests must recuse themselves from any consideration of matters affecting the LPFM station. Similarly, an officer or director of an LPFM station applicant or licensee may hold an otherwise attributable interest in a broadcast licensee, daily newspaper or cable television system if: (1) the LPFM applicant or licensee entity is a multi-faceted organization, such as a university; (2) the duties of the officer or director are wholly unrelated to the LPFM station; and (3) the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station. The purpose of these exceptions is to permit entities, such as a university, to become a LPFM station licensee, notwithstanding the fact that certain members of the entity's board hold attributable media interests. Applicants applying for LPFM station licenses under this exception must submit an explanatory exhibit in response to Question 5b identifying the individuals with otherwise attributable interests.

- b. **Section 73.858(b).** Under this provision a local chapter of a national organization will not have the attributable media interests of the national organizations attributed to it, provided that the local chapter: (1) is incorporated in its local area separately from the national organization with which it is affiliated; and (2) has a distinct local presence and mission. To satisfy the second element of this standard, an applicant must demonstrate that it has significant membership within its local area and that it has a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated. For example, the purpose of raising awareness of the toxic waste problem in the United States would not satisfy the distinct local mission requirement, but the purpose of raising awareness of the toxic waste problem in a particular local area would satisfy the distinct local mission requirement. Applicants applying for LPFM station licenses under this exception must submit an explanatory exhibit in response to Question 5b demonstrating how they meet the above-stated requirements.

- D. **Question 4: Community-Based Criteria.** Applicants must certify that they are locally-based to be eligible for LPFM authorizations. An applicant must check "Yes" to at least one of the certifications set forth in Question 4 to be eligible for an LPFM license. An applicant should not submit an explanatory exhibit in connection with its Question 4 "No" responses. To be deemed local for purposes of the Commission's rules, an applicant must:

- (a) be physically headquartered or have a campus within 10 miles of the transmitting antenna site proposed in its Application; or
- (b) have 75 percent of its board members residing within 10 miles of the transmitting antenna site proposed in its Application; or
- (c) for public safety radio service applicants **only**, have jurisdiction within the service area of the proposed transmitting antenna site set forth in the application.

- E. **Question 5: Ownership.** This question is designed to ensure that LPFM applicants do not violate FCC rules prohibiting LPFM licensees from owning or controlling certain other types of media. The applicant must certify compliance with the Commission's broadcast ownership rules, which initially will allow a party to hold an attributable interest in **only one LPFM station**, and which generally prohibit an LPFM station licensee from holding an attributable interest in any other broadcast station, including any FM translator or low power television station, or daily newspaper or cable television system. *See* 47 C.F.R. Section 73.855(b) and 73.860. The LPFM rules include several exceptions to this general prohibition for large multi-faceted entities, such as universities, and for local chapters of national organizations. **Applicants should review Section II, Question 3 instructions under the heading "Exceptions."** **Applicants relying on any of these exceptions should answer question 5b "No" and submit an explanatory exhibit.**

Question 5(a): Ownership of other LPFM stations. If the applicant or any party to the application holds an attributable interest in an LPFM station, you must check "No." A party may hold an attributable interest in only one LPFM station for a period of two years from the date that the Commission first accepts applications for new LPFM stations.

Question 5(b)(1): Other Media Interests. Neither an LPFM station licensee nor anyone with an attributable interest in an LPFM station license may own or control:

- a daily newspaper of general circulation;
- a cable television system; or
- any full power AM or FM radio station, FM translator station or full or low power television station.

A party applying for a new LPFM station license which has an attributable interest in a broadcast station or other media subject to the Commission's broadcast ownership restrictions must divest such interest prior to the commencement of operations of the LPFM station. Such applicants must provide a "No" response to the

certification required by Question 5b and submit an explanatory exhibit identifying the broadcast station or other media in which the applicant holds an attributable interest and setting forth the applicant's intention to divest such interest.

Question 5(b)(2): If the applicant or any party to the application holds an attributable interest in an application for an AM, FM, FM translator, or full or low power television station, you must check "No" and provide an exhibit that includes the file numbers of the pending applications.

Question 5(c): Immediate Family Members. The applicant must certify compliance with the Commission's policies relating to the media interests of immediate family members. Worksheet 1 to this application form is provided to help applicants determine their compliance with these Commission's policies.

Question 5(d): Investor Insulation and Non-Participation of Non-Party Investors and Creditors. This question is only relevant if:

- the applicant is a limited partnership or a limited liability corporation that seeks to insulate from attribution members or partners in accordance with the Commission's rules; or
- the applicant has non-party investors, for example, creditors, secured parties, or program suppliers, and these investors have the capacity to influence the decision-making of the applicant. If these issues are relevant to the applicant you should review Worksheet 1 to this application.

F. **Question 6: Character Issues.** Question 6 only applies to those applicants or parties identified in Question 3 that have previously applied for a broadcast license. If neither the applicant nor any party to the application has previously applied for a license, you should check "Yes." Specifically, Question 6 asks an applicant to certify that neither it nor any party to the application has had any interest in or connection with an application that was or is the subject of unresolved character issues. Where the response to Question 6 is "No," the applicant must submit an exhibit that includes an identification of the party having had the interest, the call letters and location of the station or file number of the application or docket, and a description of the nature of the interests or connection, including relevant dates. The applicant should also fully explain why the unresolved character issue is not an impediment to a grant of this application.

G. **Question 7: Adverse Findings.** An applicant must disclose in response to Question 7 whether the applicant or any party to the application has been the subject of a final adverse finding with respect to certain relevant non-broadcast matters. The Commission's character policies and litigation reporting requirements for broadcast applicants focus on misconduct which involves a violation of the Communications Act or a Commission rule or policy and on the types of non-FCC misconduct listed in the question 7 certification.

In responding to Question 7, the applicant should consider any relevant adverse finding that occurred within the past ten years. Where that adverse finding was fully disclosed to the Commission in an application filed on behalf of this applicant or in another broadcast station application and the Commission, by specific ruling or by subsequent grant of the application, found the adverse finding not to be disqualifying, it need not be reported again and the assignee may respond "Yes" to this question. However, an adverse finding that has not been reported to the Commission and considered in connection with a prior application would require a "No" response.

Where the response to Question 7 is "No," the applicant must provide in an exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another pending application, or as required by 47 C.F.R. Section 1.65(c), the applicant need only provide an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing.

H. **Question 8: Unlicensed Operation.** Question 8 requires the applicant to certify, under penalty of perjury, that neither the applicant nor any party to the application has engaged in any manner, individually or with other persons, groups, or organizations, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. Section 301.

Applicants checking "No" to Questions 8 are ineligible for a license to operate an LPFM station. In addition, applicants are warned that submission of false or misleading statements will subject applicants to fines, revocation of license, and applicable criminal penalties.

I. **Question 9: Anti-Drug Abuse Act Certification.** This question requires the applicant to certify that neither it nor any party to the application is subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

Section 5301 of the Anti-Drug Abuse Act of 1988 provides federal and state court judges the discretion to deny federal benefits to individuals convicted of offenses consisting of the distribution or possession of controlled substances. Federal benefits within the scope of the statute include FCC authorizations. A "Yes" response to Question 9 constitutes a certification that neither the applicant nor any party to this application has been convicted of such an offense or, if it has, it is not ineligible to receive the authorization sought by this application because of Section 5301.

With respect to this question only, the term "party to the application" includes if the applicant is an individual, that individual; if the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5 percent or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; all members if a membership association; and if the applicant is a partnership, all general partners and all limited partners, including both insulated and non-insulated limited partners, holding a 5 percent or more interest in the partnership.

SECTION III: POINT SYSTEM FACTORS

A. The Commission will use a point system to select among conflicting, *i.e.*, "mutually exclusive," LPFM applications filed in the same window. This section allows applicants for new LPFM stations and for major changes to existing LPFM authorizations to claim points under this selection procedure.

LPFM new and/or major change applications are treated as mutually exclusive where the applications are filed in the same window and the simultaneous operation of the two proposed stations would result in one (or both) stations causing objectionable interference to the other. The Commission makes this determination on the basis of the LPFM station-to-station distance separation requirements set forth at Section 73.807 of the Commission's rules. This rule establishes a minimum distance separation between stations operating on the same frequency (also called co-channel) and also between those stations operating on first-adjacent channels. For example, if an LPFM station application specifies a frequency of 94.7 MHz, the Commission will determine whether co-channel proposals on 94.7 and first-adjacent channel proposals on 94.5 and 94.9 MHz meet the minimum separation requirements of 24 and 14 kilometers, respectively. Applications that do not meet these minimums will be treated as mutually exclusive. In these cases, the Commission will use the point system selection procedure to select one application for grant.

Mutually exclusive applications will be awarded one point for each of the three criteria set forth below. Applicants may claim the point(s) for which they qualify by certifying "Yes" in response to the question and, in

connection with Question 1 only, by submitting the documentation set forth below. The applicant with the highest point total in its mutually exclusive group will be the tentative selectee, unless the mutual exclusivity is resolved by settlement pursuant to 47 C.F.R. Section 73.872(e). For more information see 47 C.F.R. Section 73.872; *Creation of a Low Power Radio Service, Report and Order* in MM Docket No. 99-25, FCC 00-19, at ¶¶ 139-151 (released January 27, 2000).

- B. **Question 1: Established Community Presence.** To qualify for a point under this criterion, the applicant must have an established community presence of at least two years' duration in the community that it proposes to serve. Educational institution and organization applicants must be able to certify that, during the two years prior to application, (a) it has been in existence as a nonprofit educational institution or organization, **and** (b) has been physically headquartered, has had a campus, or has had 75 percent of its governing board members residing within 16.1 kilometers (10 miles) of the coordinates of the proposed transmitting antenna. A public safety radio service applicant **only** must be able to certify that during the two years prior to application it had jurisdiction within the service area of the proposed LPFM station. Applicants claiming a point for this criterion also must submit evidence of their qualifications as an exhibit to their application forms. This evidence must demonstrate the date of commencement of the applicant's existence and the location(s) of the applicant's headquarters, campus, or governing board members' residences (or, for governmental public safety radio service applicants, the area of jurisdiction) during the two years prior to the application filing. For example, such evidence may consist of copies of corporate charters, articles of incorporation, association, or partnership, or other written instruments filed with the appropriate governmental agency (*e.g.*, Secretary of State) documenting the applicant's period of existence. The location of an applicant's headquarters, campus, or governing board members' residences may be demonstrated by the submission of statements supported by the affidavit of a person or persons with personal knowledge thereof.
- C. **Question 2: Proposed Operating Hours.** To qualify for a point under this criterion, applicants must pledge to operate at least 12 hours per day. The minimum operating schedule for LPFM stations is five hours per day. See 47 C.F.R. Section 73.850. Applicants that claim a point for this criterion will be required to adhere to their pledges to operate at least 12 hours per day. The Commission will use random audits to verify such adherence, and also will consider written complaints. The Commission staff may issue letters of inquiry requiring submission of documentation in connection with such audits. Applicants that fail to fulfil their pledges will be

subject to administrative sanctions including the possibility of monetary forfeitures and revocation proceedings.

- D. **Question 3: Local program origination.** To qualify for point under this criterion, applicants must pledge to originate locally at least eight hours of programming per day. Local origination is defined as the production of programming within 16.1 kilometers (10 miles) of the coordinates of the proposed transmitting antenna. Applicants that claim a point for this criterion will be required to adhere to their pledges to originate locally at least eight hours of programming per day. The Commission will use random audits to verify such adherence, and also will consider written complaints. The Commission staff may issue letters of inquiry requiring submission of documentation in connection with such audits. Applicants that fail to fulfil their pledges will be subject to administrative sanctions including the possibility of monetary forfeitures and revocation proceedings.

SECTION V: LPFM ENGINEERING AND PREPARER'S CERTIFICATION

- A. **General Instructions for Section V.** The engineering section contains a "Tech Box" in which the applicant specifies all technical data required for engineering review. In the event that there are any discrepancies between data in the "Tech Box" and data submitted elsewhere in the application, the data in the "Tech Box" will be controlling.

Applicants are not required to provide specific transmitter make and model information on FCC Form 318. Rather, the permit authorizing construction will require installation of a FCC certified transmitter in compliance with the provisions of 47 C.F.R. Section 73.1660. Applicants also are not required to list the specific antenna make, manufacturer, model number and number of bays for FM antennae on FCC Form 318. That data is submitted following the completion of construction in an application for covering license (FCC Form 319).

- B. **Notifications.** All applicants must comply with the requirements of 47 C.F.R. Section 73.1030. Specifically, applicants within affected areas must notify United States Government radio astronomy installations, radio receiving installations, and FCC monitoring stations of the proposed facility and its possible impact on their operations. See Section 73.1030. Affected facilities requiring written notification at the time the LPFM application is filed include radio astronomy observatories located in Arecibo, Puerto Rico and Green Bank, West Virginia and the Table Mountain Radio Receiving Zone in Boulder County, Colorado. The written notification should be sent to the

appropriate address listed in Section 73.1030 and should include antenna height and coordinates, frequency and power. The staff will coordinate applications with the Commission's Enforcement Bureau when there is the potential for an adverse effect on an FCC monitoring station. However, prior notice to the Enforcement Bureau is suggested when an applicant believes its facility may affect a monitoring station in the manner described in Section 73.1030. The Commission need not be informed of the date of any notification.

- C. **Tech Box.** The applicant must accurately specify the requested facilities in Questions 1 through 8 of the Tech Box. Conflicting data found elsewhere in the application will be disregarded. All Questions must be completed. The response "on file" is not acceptable. The response "not applicable" is not acceptable unless otherwise noted below.

Question 1: Class. The class, LP100 or LP10, must be specified as defined by 47 C.F.R. Section 73.811. **Note:** Applications filed during a window period will only be accepted if the specified class matches that set forth in the public notice announcing the window.

Question 2: Channel. The proposed channel must be between 201 and 300. See 47 C.F.R. Section 73.805. Applicants can determine which frequencies, if any, are available at any specific set of coordinates within the United States and its territories by using a simple computer program available at the Audio Division web-page <http://www.fcc.gov/mb/asd/lpfm>.

Question 3: Antenna Location Coordinates. The proposed antenna site must be specified using North American Datum 27 (NAD 27) coordinates. Indicate North or South Latitude, and East or West Longitude. Applicants can determine coordinates with a 7.5 minutes series U.S. Geological Survey topographic quadrangle map.

The latitude and longitude coordinates for all points in the United States for this LPFM service are based upon the 1927 North American Datum (NAD 27). The National Geodetic Survey is in the process of replacing NAD 27 with the more accurate 1983 North American Datum (NAD 83) and updating current topographic maps. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data from these two sources, the Commission has announced that, until further notice, all LPFM applicants are to furnish coordinates based on NAD 27 datum on all submissions and the Commission will continue to specify NAD 27 coordinates in its data bases and authorizations. Applicants may access a simple computer program to convert NAD 83 coordinates to NAD 29 coordinates at <http://www.fcc.gov/mb/asd/welcomeALT.html>.

Question 4: Antenna Structure Registration Number.

The Antenna Structure Registration number should be entered here. Most towers greater than 61 meters (200 feet) in height and those located near airports require antenna registration numbers. See 47 C.F.R. Section 17.4. If the tower does not require registration, indicate that registration is “Not Applicable,” or if the FAA has not yet determined whether a proposed structure would be a hazard, indicate whether the FAA Notification has been filed with the FAA. For more information regarding the Commission’s antenna structure registration requirements, applicants may review the Wireless Telecommunications Bureau’s Antenna Structure Registration web site at <http://www.fcc.gov/wtb/antenna>.

Questions 5-7: Elevation and Heights. All heights must be in meters, rounded to the nearest whole number.

Question 8: Power and Height Limitations. The staff will determine an LPFM station’s antenna height above average terrain (HAAT) from the Tech Box data for coordinates, site elevation, and antenna radiation center above ground level. The effective radiated power (ERP) specified on the LPFM construction permit authorization will be given in a range that, when considered with the staff-calculated HAAT, would allow operation within the maximum and minimum ERP of the class of LPFM station applied for. See 47 C.F.R. Section 73.811.

D. **Certifications.** Questions 9-11 set forth a series of certifications concerning the Commission’s technical standards and operational requirements for LPFM stations.

Question 9: Interference. The applicant must certify that the proposal complies with the spacing provisions contained in 47 C.F.R. Section 73.807. If the proposed facility will be fully-spaced under Section 73.807, the applicant should respond “Yes” to Question 9a and respond to “N/A” to Question 9b if the application proposes to modify an authorized station that is currently short-spaced, the applicant must complete Question 9b.

Question 10: TV Channel Six Interference. If the proposed facility specifies operation on Channels 201-220, the applicant must certify that the proposal complies with the Channel Six spacing provisions contained in 47 C.F.R. Section 73.825.

Question 11: National Environmental Policy Act:

a. **Environmental Impact.** The National Environmental Policy Act of 1969 requires all federal agencies to ensure that the human environment is given consideration in all agency decision-making. Since January 1, 1986, applications for new broadcast stations, modifications of existing stations, and license

renewals must contain include either an environmental assessment that will serve as the basis for further Commission review and action, or a certification that operation of the station will not have a significant environmental impact. See Section 1.1307. In this regard, applicants are required to consider eight environmental factors. These factors are listed in the attached General Environmental Worksheet (Worksheet 2).

Should the applicant be unable to conclude that its proposal will have no significant impact on the quality of the human environment, it must submit an Environmental Assessment containing the following information:

- (1) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high-intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.
- (2) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) by zoning, planning, environmental and other local, state, or federal authorities on matters relating to environmental effects.
- (3) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.
- (4) A discussion of environmental and other considerations that led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects; and any alternative sites or facilities that have been or reasonably might be considered.
- (5) If relevant, a statement why the site cannot meet the FCC guidelines for RF exposure with respect to the public and workers.

b. **RF Exposure Guidelines.** In 1996, the Commission modified its guidelines and procedures for evaluating environmental effects of RF emissions. All LPFM station applications subject to environmental processing must demonstrate compliance with the new requirements. The new guidelines are explained in more detail in OET Bulletin 65, entitled Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields,

Edition 97-01, released August, 1997, and Supplement A: Additional Information for Radio and Television Broadcast Stations (referred to here as "OET Bulletin 65" and "Supplement A," respectively). Both OET Bulletin 65 and Supplement A can be viewed and/or downloaded from the FCC Internet site at <http://www.fcc.gov/oet/rfsafety>. Copies can also be purchased from the Commission's duplicating/research contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (telephone: (202) 857-3800; fax: (202) 857-3805. Additional information may be obtained from the RF Safety Group at rfsafety@fcc.gov or (202) 418-2464 or from the FCC Call Center at 1-888-CALL FCC (225-5322).

- c. **Worksheets.** Worksheets 2 and 3 are designed to facilitate and substantiate the certification called for in Section V, Question 11. The General Environmental Worksheet (Worksheet 2) should be used by all applicants. The RF Exposure Worksheet (Worksheet 3) will assist the applicant in completing the required radiofrequency (RF) electromagnetic field calculations to determine whether the proposed station adequately protects the public and workers from potentially harmful RF fields.

Some, but not all, stations will be able to use the RF Exposure Worksheet. The RF Exposure Worksheet allows the applicant to determine if its LPFM station would meet the Commission's RF guidelines based upon the facility's antenna height above ground level. Section One of the RF Exposure Worksheet is applicable to an LPFM station that is the only RF source on the only supporting structure in the area. Such a facility may not exceed the Commission's RF limit. Section Two of the RF Exposure Worksheet applies to an LPFM station that is one of several RF sources at a site. In this case, the LPFM is excluded from a detailed showing of compliance if it does not contribute more than 5% of the Commission's RF limit.

Applicants that fail to meet these antenna height requirements will need to utilize more complex calculations or measurements to demonstrate compliance and may require the assistance of a qualified consulting engineer to determine whether the proposed facility will meet the RF exposure guidelines. RF levels may still be acceptable based on a more detailed evaluation of a number of variables, e.g., antenna radiation patterns or measurement data. In that case, the applicant must submit an exhibit to the application that explains why the proposed facility does not exceed the RF radiation exposure guidelines at locations where humans are likely to be present, and/or describes measures or circumstances which will

prevent or discourage humans from entering those areas where the RF exposure exceeds the guidelines, e.g., fencing or remote location. The guidelines are explained in more detail in OET Bulletin 65.

- E. **Preparer's Certification.** When someone other than the applicant has prepared the engineering section of the FCC Form 318, Section V requires that person to certify, to the best of his/her knowledge and belief, the veracity of the technical data supplied. The Section V preparer's certification need not be completed if the engineering portion of the application has been prepared by the applicant. In that event, the applicant's Section IV, page 5 certification will cover the information provided in both the legal and engineering sections of the application.

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

If you do not provide the information requested on this form, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authorization.

We have estimated that each response to this collection of information will take 45 minutes to 6 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this burden estimate, or on how we can improve the collection and reduce the burden it causes you, please e-mail them to pra@fcc.gov or send them to the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0920), Washington, DC 20554. Please **DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS**. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0920.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

FOR
FCC
USE
ONLY

FCC 318

APPLICATION FOR CONSTRUCTION PERMIT FOR A LOW POWER FM BROADCAST STATION

FOR COMMISSION USE ONLY
FILE NO.

Section I - General Information

1. Legal Name of the Applicant

Mailing Address

City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Call Sign	Facility ID Number

2. Contact Representative (if other than applicant)

Firm or Company Name

Mailing Address

City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	

3. Application Purpose.

- | | |
|--|--|
| <input type="checkbox"/> New station | <input type="checkbox"/> Major modification of construction permit |
| <input type="checkbox"/> Major change in licensed facility | <input type="checkbox"/> Minor modification of construction permit |
| <input type="checkbox"/> Minor change in licensed facility | <input type="checkbox"/> Amendment to pending application |

a. File number of original construction permit: _____

N/A

b. Station location:

City	State
------	-------

If an amendment, **submit as an Exhibit** a listing by section and question number of the portions of the pending application that are being revised.

Exhibit No.

NOTE: The failure to include an explanatory exhibit providing full particulars in connection with a "No" response may result in dismissal of the application. See General Instructions, Paragraph I for additional information regarding the completion of explanatory exhibits.

Section II - Legal

New LPFM station applicants must complete all questions in Section II. Major and minor change applicants must complete only questions 1, 4, 6, 7 and 9.

1. **Certification.** Applicant certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Applicant further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application, instructions, and worksheets. Yes No

2. **Eligibility.** Each applicant must answer "Yes" to one and "No" to two of the three following certifications. An applicant should **not** submit an explanatory exhibit in connection with these Question 2 "No" responses.

The applicant certifies that:

- a. it is a nonprofit educational institution; or Yes No
- b. it is a nonprofit educational organization; or Yes No
- c. it proposes a noncommercial public safety radio service to protect the safety of life, health or property. Yes No

If the answer to 2c is "Yes," and the applicant is submitting multiple applications, is this application a "priority" application? See *Creation of a Low Power Radio Service, Memorandum Opinion and Order* in MM Docket No. 99-25, FCC 00-349 at paragraphs 79-80 (released September 28, 2000). Yes No
 N/A

Note: Applicants that answer "Yes" to 2a., 2b. or 2c. must include an exhibit that describes the applicant's educational or public safety radio program and how its proposed station will be used to advance its educational program or to protect the safety of life, health or property. The exhibit should include the state and date of applicant's incorporation.

Exhibit No.

3. **Parties to the Application.**

a. List separately each party to the application including, as applicable, the applicant, its officers, directors, five percent or greater stockholders, non-insulated partners, members, and all other persons and entities with attributable interests. If a corporation or partnership holds an attributable interest in the applicant, list separately, as applicable, its officers, directors, five percent or greater stockholders, non-insulated partners, and board members. Create a separate row for each individual or entity. Attach additional pages if necessary.

- (1) Name and address of party.
- (2) Citizenship.
- (3) Positional Interest: Officer, director, general partner, limited partner, LLC member, or investor/creditor attributable under the Commission's **equity/debt plus** standard.
- (4) Percentage of votes.
- (5) Percentage of total assets (equity plus debt).

(1)	(2)	(3)	(4)	(5)

b. Applicant certifies that equity and financial interests not set forth above are non-attributable.

Yes No
 N/A

See Explanation
in Exhibit No.

4. **Community-Based Criteria.** The applicant certifies that:

a. it is a nonprofit educational institution or organization that is physically headquartered or has a campus within 16.1 kilometers (10 miles) of the proposed transmitting antenna site set forth in this application;

Yes No

b. it is a nonprofit educational institution or organization that has 75 percent of its board members residing within 16.1 kilometers (10 miles) of the proposed transmitting antenna site set forth in this application; or

Yes No

c. it proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station.

Yes No

Note: An applicant should **not** submit an explanatory exhibit in connection with these Question 4 "No" responses.

5. **Ownership.** The applicant certifies, based on its completion of Worksheet 1 and its review of the instructions to this application, that:

a. no party to this application has an attributable interest in any other low power FM broadcast station;

Yes No

b. 1. no party to this application has an attributable interest in any non-LPFM broadcast station, including any full power AM or FM station, FM translator station, full or low power television station, or any other media subject to the Commission's broadcast ownership restrictions;

Yes No

See Explanation
in Exhibit No.

2. no party to this application has pending an application for a low power FM, full power AM or FM station, FM translator station, or full or low power television station;

Yes No

c. the applicant is in compliance with the Commission's policies relating to media interests of immediate family members; and

Yes No

d. the applicant is in compliance with the Commission's policies relating to investor insulation and the non-participation of non-party investors and creditors.

Yes No

6. **Character Issues.** The applicant certifies that neither the applicant nor any party to the application has or has had any interest in, or connection with:

Yes No

See Explanation
in Exhibit No.

- a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or
- b. any pending broadcast application in which character issues have been raised.

7. **Adverse Findings.** The applicant certifies that no adverse finding has been made and no adverse final action has been taken by any court or administrative body as to the applicant, any party to this application, or any non-party equity owner in the applicant, in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

Yes No

If the answer is "No," attach as an Exhibit a full disclosure concerning the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and a description of the disposition of the matter. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 C.F.R. Section 1.65, the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) the disposition of the previously reported matter.

Exhibit No.

8. **Unlicensed Operation.** The applicant certifies, under penalty of perjury, that neither the applicant nor any party to the application has engaged in any manner, individually or with other persons, groups, organizations, or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. Section 301.

Yes No

9. **Anti-Drug Abuse Act Certification.** Applicant certifies that neither the applicant nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

Yes No

Section III - Point System Factors

New station and major change applicants must complete the following questions.

Point system factors are used only for selection among mutually exclusive applications for new LPFM stations and major modifications of authorized LPFM stations. Mutually exclusive applicants will be awarded one point for each of the following:

1. **Established community presence.**

a. **Educational Institutions and Organizations.** The applicant certifies that, for a period of at least two years prior to the date of this application, it has existed as an educational institution or organization and has been physically headquartered, has had a campus, or has had seventy-five percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna. Yes No

Exhibit No.

An applicant claiming a point under factor 1a. must submit an exhibit documenting its established community presence. See instructions.

b. **Public Safety Radio Service.** The applicant certifies that, for a period of at least two years prior to the date of this application, it has had jurisdiction within the service area of the proposed public safety radio service LPFM station. Yes No

2. **Proposed operating hours.** The applicant pledges to operate the proposed station for at least 12 hours per day. Yes No

3. **Local program origination.** The applicant pledges to originate locally at least eight hours of programming per day. Yes No

Note: For purposes of this factor, local origination is the production of programming within 10 miles of the coordinates of the proposed transmitting antenna.

Section IV - Certification

The applicant certifies that the statements in this application are true, complete, and correct to the best of its knowledge and belief, and are made in good faith.

The applicant acknowledges that all certifications and attached Exhibits are considered material representations.

The applicant acknowledges that the submission of false or misleading statements will subject the applicant to fines, revocation of license(s), and applicable criminal penalties.

The applicant hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by licensee or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date

Section V LPFM Engineering

TECHNICAL SPECIFICATIONS

Applicants must list technical specifications accurately. Contradictory data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

TECH BOX

1.	Class:	<input type="checkbox"/> LP100	<input type="checkbox"/> LP10	
2.	Channel:	_____		
3.	Antenna Location Coordinates: (NAD 27)			
		_____ ° _____ ' _____ "	<input type="checkbox"/> N	<input type="checkbox"/> S Latitude
		_____ ° _____ ' _____ "	<input type="checkbox"/> E	<input type="checkbox"/> W Longitude
4.	Antenna Structure Registration Number:	_____		
		<input type="checkbox"/> Not applicable	<input type="checkbox"/> FAA Notification Filed with FAA	
5.	Antenna Location Site Elevation Above Mean Sea Level:	_____	meters	
6.	Overall Tower Height Above Ground Level:	_____	meters	
7.	Height of Antenna Radiation Center Above Ground Level:	_____	meters	
8.	Power and height limitations. By checking "Yes", the applicant acknowledges that it will be authorized to operate within the parameters defined in 47 C.F.R. Section 73.811 as calculated based on the data specified herein.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

An explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is

9. a. **Interference.** The applicant certifies that the proposed facility complies with all pertinent distance separation requirements of 47 C.F.R. Section 73.807. Yes No

Note: New station applications that fail to meet all Section 73.807 separation requirements will be returned and not provided an opportunity to file a curative amendment.

b. **Short-Spaced Stations.** Major and minor change applicants responding "No" to Question 9a. must answer Question 9b. The applicant certifies that the proposed facility modification complies with 47 C.F.R. Section 73.807(f). Yes No See Explanation in Exhibit No.

N/A

10. **TV Channel 6 Interference (Channel 201-220).** The applicant certifies that the proposed facility complies with 47 C.F.R. Section 73.825. Yes No See Explanation in Exhibit No.

N/A

11. **National Environmental Policy Act.** The applicant certifies, based on its completion of Worksheets 2 and 3 and its review of the instructions to this application, that the proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306 (i.e., the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments). Unless the applicant can determine compliance through the use of the attached General Environmental and RF Exposure Worksheets, an **Exhibit is required.** Yes No See Explanation in Exhibit No.

THE FOLLOWING PREPARER'S CERTIFICATION MUST BE COMPLETED AND SIGNED.

PREPARER'S CERTIFICATION

I certify that I have prepared Section V (Engineering Data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name	Relationship to Applicant (e.g., Consulting Engineer)	
Signature	Date	
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT
(U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

CERTIFICATE OF SERVICE

I, Judith J. Settles, certify that a true and correct copy of the foregoing Petition for Reconsideration was sent by first-class, postage prepaid mail this 28th day of February, 2007, to the following:

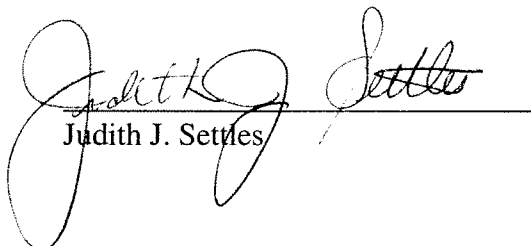
Rodney D. Moyes
Radio Goldfield Broadcast, Inc.
P.O. Box 121
Goldfield, NV 89013

Dominic G. Pappalardo
Radio Goldfield Broadcast, Inc.
532 N. Fifth Ave. Box 121
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445 12th Street, S.W.
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James D. Bradshaw*
Deputy Chief, Audio Division
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* Hand Delivered


Judith J. Settles