

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

MM Docket No. 91-347

In the Matter of

Amendment of Part 73 of the
Commission's Rules to Modify
Processing Procedures for
Commercial FM Broadcast
Applications

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 1993; Released: October 20, 1993

By the Commission:

1. In July 1992 the Commission modified the strict "hard look" application processing system used in the commercial band of the FM radio service.¹ The new approach, which is more lenient, gives applicants the opportunity to correct what were previously considered uncorrectable defects fatal to their applications. The new approach is applicable to all applications that are of sufficient completeness to satisfy a new "minimum filing requirement." The Association of Federal Communications Consulting Engineers (AFCCE) filed a timely Petition for Reconsideration of this action.² AFCCE, while generally supporting our modification of the "hard look," believes that our new minimum filing requirement errs in allowing applicants to correct the omission of certain engineering data.

BACKGROUND

2. The old "hard look" system was used for approximately seven years beginning in 1985. It was designed to enable the staff to process applications with a reasonable speed of service at a time when the Commission was

receiving large numbers of commercial band FM applications, a high percentage of which were carelessly prepared and/or speculative. Under the old "hard look" system, the staff applied rigorous standards to applications and provided extremely limited opportunity for curative amendment of defects. This resulted in return or dismissal of applications containing any one of approximately two dozen enumerated defects in the application's "tenderability" (*i.e.* substantial completeness) or "acceptability" (*i.e.* compliance with core legal and engineering requirements) after close of the relevant filing period.³

3. The Commission modified the "hard look" approach, effective August 7, 1992, to make it less stringent. This was deemed desirable as a result of improved quality and decreased quantity of commercial band FM applications, as well as the Commission's adoption of other measures to discourage speculation in broadcast proceedings. Under the modified approach in place today, applicants must initially satisfy a two-tiered minimum filing requirement which is based on the hard look's tenderability standards. To satisfy the two-tiered requirement an application must contain all six elements enumerated in "Tier One" and at least ten of the 13 elements enumerated in "Tier Two."⁴ Applications that do not meet this minimum filing requirement are returned without an opportunity to amend. Applicants who satisfy this minimum filing requirement but who nevertheless have not met all "hard look" tender and acceptance criteria receive a deficiency letter giving them an opportunity to bring their application into compliance with the "hard look" criteria.

PETITION FOR RECONSIDERATION

4. The only issue raised on reconsideration is whether certain engineering deficiencies currently included in Tier Two of the minimum filing requirement (which potentially can be corrected if there are no more than three such deficiencies) are of such importance that they should be reclassified as Tier One requirements (making any omission of this data fatal). The engineering data at issue involves Tier Two requirements 5 and 6 concerning antenna radiation center elevation above mean sea level, total struc-

¹ See *Report and Order*, Processing Procedures for Commercial FM Broadcast Applications, MM Docket No. 91-347, 7 FCC Rcd 5074 (1992). The "hard look" and modified "hard look" processing systems apply to commercial and non-commercial entities seeking to construct radio stations on channels 221 to 300 in the commercial FM band. Non-commercial applicants operating on "reserved" (non-commercial) band channels 200 to 220 are subject to different processing rules.

² Petition for Reconsideration of the AFCCE, MM Docket No. 91-347 (filed September 8, 1992). The Petition was timely filed pursuant to 47 C.F.R. Sections 1.429(d) and 1.4(b)(3) and (j). Because the 30th day after Federal Register publication fell on the Labor Day holiday, AFCCE's submission on the following business day was timely.

³ For examples of tender and acceptance requirements see *Report and Order*, 7 FCC Rcd 5074, notes 9, 10, and Appendix D.

⁴ See *Report and Order*, 7 FCC Rcd 5074, 5081-82 (Appendix

C). Under Tier One requirements applications must include each of the following: (1) applicant's name and address, (2) applicant's original signature, (3) principal community, (4) channel or frequency, (5) class of station, and (6) transmitter site coordinates. Applications satisfying Tier One proceed to Tier Two, under which no more than three of the following 13 requirements may be deficient: (1) applicant's interests in other broadcast stations and applications, (2) applicant's relatives and their interests in other broadcast stations and applications, (3) certification of compliance with 47 U.S.C. Section 310(b) regarding interests of aliens and foreign governments, (4) certification of financial ability to construct and operate, (5) tower and antenna heights, (6) effective radiated power, (7) antenna (directional or non-directional), (8) contour protection for short-spaced assignments, (9) transmitter site map meeting all requirements, (10) coverage map meeting all requirements, (11) tower sketch, (12) certification of compliance with local public notice requirements, (13) certification of site availability.

ture elevation, and effective radiated power.⁵ AFCCE argues that this information is too critical to be completely missing.⁶ AFCCE predicts that if we allow applicants to supply such missing data by amendment, we will encourage applicants to file incomplete and/or speculative applications which will lead to significant delays in the staff's processing of all commercial band FM applications.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

DISCUSSION

5. When we modified the "hard look" processing approach in 1992, we too were concerned with the possibility that a lenient approach might cause a decrease in FM application quality and/or a reduced speed of processing. It was for this reason that we adopted the minimum filing requirement at issue today. We reasoned that under a minimum filing requirement applicants would have to make a reasonable effort to provide us with basic information, and that this requirement would therefore minimize the possible impact of our modified approach on application quality and speed of service. In selecting the elements included in Tier One of the requirement, we balanced our need for critical data to start our processing and our desire to be more flexible by allowing applicants additional leeway to correct some mistakes and oversights.

6. AFCCE's Petition for Reconsideration, filed shortly after adoption of the new rules, expresses the association's disagreement with the Commission's reasoning. We believe, however, that we achieved a proper balance and that AFCCE has not demonstrated otherwise. Although the engineering data that AFCCE identifies is essential, a few errors or omissions in this information can be tolerated at the early stages of processing to allow for greater flexibility of the system as a whole.

7. The modified "hard look" system has now been in use for approximately one year and, in our experience, is working well. We have not received the speculative applications that AFCCE predicted. Nor have there been processing delays as AFCCE anticipated. Although we now send letters to applicants giving them a chance to correct deficiencies, the resulting increased use of our resources is offset by a reduction in the number of Petitions for Reconsideration. The net result is no appreciable change in speed of service, due to a more effective and efficient process. Thus, we do not find a need to adopt AFCCE's proposal, and its Petition for Reconsideration will be denied.

ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that the Petition for Reconsideration of the Association of Federal Communications Consulting Engineers IS DENIED.

9. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

10. For further information, contact Irene Bleiweiss at (202) 632-6485.

⁵ The Commission combined the first two of these items under a single Tier Two requirement: "tower and antenna heights." While the Petition also refers to the importance of two other engineering requirements (channel or frequency; and transmitter site coordinates), these items are already included in Tier One, making any omission of these items fatal.

⁶ AFCCE does, however, believe that the Commission should permit amendment of this data in cases of inconsistency or error. AFCCE would, for example, permit amendment of this information if an elevation dimension on a tower sketch is different from that shown on the application form or if tower elevation dimensions do not add up properly.