



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 07-3521
Released: August 9, 2007

Media Bureau Announces NCE FM New Station and Major Change Filing Procedures For October 12 – October 19, 2007 Window; Limited Application Filing Freeze to Commence on September 8, 2007

As directed by the Commission,¹ this Public Notice announces procedures and filing requirements that will apply to the first noncommercial educational (“NCE”) FM new station and major change filing window. As previously disclosed, the window will open on Friday, October 12, 2007, and close on Friday, October 19, 2007. The window is available for FM reserved band (channels 201 – 220) proposals.² In conjunction with this window, the Commission will not accept reserved band minor change applications or non-reserved band adjacent channel (channels 221 – 223) applications after 11:59 p.m., September 7, 2007. The freeze will continue in effect until the close of the window.

First-Time Applicants. Applicants that have not previously filed an NCE FM application will find useful, step-by-step information about the application and licensing process at www.fcc.gov/mb/audio/howtoapply.html. First-time applicants should note especially that: (1) NCE stations are licensed only to non-profit educational organizations (not individuals); (2) NCE FM new station licensing opportunities are more readily available in rural areas and smaller communities; (3) the Commission does not publish a list of “available” frequencies or provide a “channel finder tool” to local “available” frequencies; and (4) applicants generally craft their technical proposals with the assistance of consulting engineers. One source for locating consulting engineers is the Association of Federal Communications Consulting Engineers, <http://www.afcce.org/Members.htm>.

Potential Application Cap. Today, the Commission is releasing a Public Notice that seeks public comment on a potential limit on the number of applications that a party may file during the window.³ The Public Notice tentatively concludes that a party to an application filed in the window may hold attributable interests in no more than a total of ten applications filed in the window.⁴ Under that proposal, if it is determined that any party to an application has an attributable interest in more than ten

¹ *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 07-40 at ¶ 203 (rel. Mar. 27, 2007) (“NCE Omnibus Order”).

² See *Media Bureau announces NCE FM New Station and Major Modification Application Filing Window for New and Certain Pending Proposals; Window to Open on October 12, 2007*, Public Notice, DA 07-1613 (rel. Apr. 4, 2007).

³ See *FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in October 12 – October 19, 2007 Window*, FCC 07-145 (rel. Aug. 9, 2007).

⁴ See *NCE R&O*, 15 FCC Rcd at 7418-20 (extending commercial attribution principles to NCE applications).

applications, the Bureau would retain the ten applications that were filed first – based on application file number – and dismiss all other applications. This potential application cap is intended to deter speculation and permit the expeditious processing of the window-filed applications with limited Bureau resources. Pending new and major change applications filed under former licensing procedures would not count toward the cap. Major modification applications also would not count toward the cap. The procedure for commenting on this proposed limitation is described in that Public Notice. Comments are due within 15 days of the date of Federal Register publication of that Public Notice, and reply comments are due within 25 days of the date of Federal Register publication of that Public Notice.

Filing Freeze. A limited application filing freeze will commence on September 8, 2007, and continue until the close of the window. The freeze will include all reserved band minor change applications and amendments, and, due to their potentially preclusive impact on window filings, Channel 221, 222, and 223 non-reserved band minor change applications and amendments. This freeze is necessary to promote transparency and predictability for window filers. It also is designed to provide sufficient time for applicants and consulting engineers to verify the availability of spectrum and perfect applications, while minimizing expenditures on facility proposals that otherwise could be blocked by minor change filings immediately prior to the opening of the window.

Filing Requirements. Applicants must file new proposals electronically on Form 340. Such applicants must complete all sections of the application form. Applicants with pending proposals, typically NCE FM new station applications that were filed under prior licensing procedures but not cut-off prior to the 2000 Commission-imposed NCE comparative licensing freeze, must file amendments electronically on Form 340. Amendments must include completed Section III (Fair Distribution of Service), Section IV (Point System Factors), V (Tie Breakers), and VI (Certification). **The failure to electronically amend and fully complete a pending application during the October window will result in its dismissal with prejudice.** Updated ownership information, if necessary, also must be submitted during the window. In the *NCE Omnibus Order*, the Commission determined that it would be unreasonable to penalize applicants for routine and inevitable changes in applicant governing bodies over time. On this basis the Commission waived and directed the staff to waive Section 73.3573 of the Commission’s Rules (the “Rules”) for NCE FM applicants that experienced gradual but substantial ownership changes over time but not as a result of a party or parties efforts to gain control over an NCE station application.⁵ An affected applicant should request a Rule waiver as part of its window-filed ownership amendment.

Comparative Consideration of Applications. Maximum qualifications for new applications filed in the window are established at the time of filing.⁶ Maximum qualifications for pending applications are established as of the close of the window.⁷ The Commission will take into account any negative change in an applicant’s comparative position after the close of the window. The Commission will not take into account any enhancement in an applicant’s comparative position after the close of the window.⁸

⁵ *NCE Omnibus Order* at ¶ 60.

⁶ 47 C.F.R. § 73.7003(e).

⁷ 47 C.F.R. § 73.7003(f)(3).

⁸ *See* 47 C.F.R. § 73.7003(e).

Fair Distribution Analysis. The following principles apply to fair distribution of service analyses.⁹ Consistent with the methodology used to award FM allocations Priority (1) (providing a first receptive service) and Priority (2) (providing a second receptive service) preferences, NCE first and second service calculations must include outstanding construction permits for new unbuilt NCE FM stations.¹⁰ In cases in which a same-area NCE FM station holds both a license and a construction permit, calculations must be based on the licensed facility unless the licensee has commenced operations in accordance with its permit pursuant to program test authority and a covering license application is on file as of the close of the window. Also consistent with FM allocations policy, vacant allotments and pending applications are not counted for determining first and second NCE service levels. Analyses will be based on service and population data as of the close of the window.¹¹ A previously released Public Notice provides additional information on the application of the fair distribution methodology to competing NCE FM proposals.¹²

Documentation Supporting Point System Claims. An applicant must place in its public inspection file documentation that supports each of its point system claims.¹³ An applicant also must submit copies of this documentation to the Commission.¹⁴ The Bureau strongly recommends that applicants include copies of this documentation as exhibits to their application submissions to satisfy this filing requirement.

LPFM Divestiture Pledges. A divestiture pledge is generally ineffective as a mechanism to avoid the attribution of broadcast interests held at the close of the window for the purpose of qualifying for points under the NCE diversity criterion.¹⁵ The Commission, however, has carved out an exception for non-fill-in translators if the applicant pledges to request the cancellation of the translator authorization upon the new NCE FM station's commencement of operations.¹⁶ Further, in the *Omnibus Order*, the Commission waived the Rules to accept a contingent pledge to divest a Class D station license prior to the commencement of operations by a same-area full service NCE FM station.¹⁷

We recognize that LPFM stations may find themselves in circumstances similar to those on which the Class D Rule waiver was based. Specifically, an LPFM licensee may be seeking substantial service improvements by surrendering an authorization that is, in significant respects, secondary to full service station authorizations and applications. We also note that the Rules prohibit an LPFM station from holding an attributable interest in any other non-LPFM broadcast authorization.¹⁸ Thus, in any event, the

⁹ See 47 C.F.R. § 73.7002.

¹⁰ See, e.g., *Baker v. FCC*, 834 F.2d 181 (D.C. Cir. 1987).

¹¹ See *NCE MO&O*, 16 FCC Rcd at 5083 (¶26).

¹² See *Mass Media Bureau Provides Examples of Application of NCE Section 307(b) Criteria*, Public Notice, 16 FCC Rcd 10892 (MMB 2001).

¹³ See *NCE R&O*, 15 FCC Rcd at 7423; see also Form 340, Section IV; see also Instructions For FCC Form 340, Section IV.

¹⁴ *Id.*

¹⁵ See *NCE MO&O*, 16 FCC Rcd at 5109, n.24.

¹⁶ See *NCE MO&O*, 16 FCC Rcd at 5102-03.

¹⁷ See *Omnibus Order* at ¶ 47.

Rules would require the divestiture of an LPFM authorization prior to the grant of an NCE FM full service construction permit. An applicant that seeks to avoid the attribution of an LPFM interest must as part of its window-filed application: (1) propose the divestiture of the LPFM interest prior to grant of its NCE FM construction permit application; and (2) request a waiver of the Rule that would otherwise result in the attribution of the LPFM interest in the applicant's diversity criterion point system determination.

Tiebreakers. When reporting pending applications in Section V(1), applicants should include the subject application and all other applications that have been or will be filed in the window. Applicants should include any application at issue in the *NCE Omnibus Order* that has not been granted, dismissed, or denied prior to the opening of the window. Applicants should not include requests to participate in an auction filed on Form 175.

Site Assurance. At the time its application is filed, an applicant must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities.¹⁹ Each applicant should be prepared to submit supporting documentation upon Commission request.

Financial Qualifications. Form 340 requires each applicant for a new NCE FM station to certify that, at the time its application is filed, the applicant has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate it for three months, without additional funds.²⁰ Each applicant should be prepared to submit supporting documentation upon Commission request.

Electronic Filing Instructions. Applications for new facilities, major changes in existing facilities, and amendments to not cut-off applications must be filed **between October 12, 2007, and October 19, 2007**. All FCC Form 340 applications and amendments must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic filing system. Paper-filed not cut-off FCC Form 340 submissions filed prior to April 22, 2000, for which no amendment to FCC Form 340 is submitted during the window will be dismissed.

The CDBS electronic filing system has numerous business rules and other edit checks that ensure that filings are substantially complete when filed. When filing a new or major change proposal, applicants must select "New station" or "Major Change in licensed facility," respectively, on the Pre-form for Form 340 (Question 2 – Application Purpose).²¹ When filing an amendment to an existing application, applicants must select "Minor Amendment to pending application" on the Pre-form for Form 340 (Question 2 – Application Purpose). In addition, the file number issued to the previously filed Form 340

¹⁸ See 47 C.F.R. § 73.860.

¹⁹ See, e.g., *William F. and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974); *62 Broadcasting*, Decision, 4 FCC Rcd 1768 (1989); *South Florida Broadcasting*, Memorandum Opinion and Order, 57 RR2d 495 (1984).

²⁰ See Form 340, Section II, Question 15.

²¹ Although applicants may file "major modification of construction permit" applications, the Bureau strongly discourages such filings. They will be subject to competing proposals. Such an applicant will have no assurance that its major modification proposal will be comparatively preferred to mutually exclusive filings or, assuming that it is, that the application will be granted prior to the expiration of the underlying construction permit. The Bureau will automatically dismiss any major modification application upon expiration of the associated permit. It is imperative that an applicant submitting a major modification of construction permit application have an alternate plan to complete station construction prior to the construction permit deadline.

must be entered on the Pre-form in the field “File Number.” Instructions for use of the electronic filing system are available in the CDBS User’s Guide, which can be accessed from the electronic filing web site at:

<http://www.fcc.gov/e-file>

The Guide can be accessed by clicking on the “Broadcast Radio and Television Electronic Filing System (CDBS)” link at the electronic filing web site, above. This action will take the user to the Media Bureau’s CDBS Electronic Filing System site. The user should then click on the “User’s Guide” link. 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. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

Applicants are encouraged to access the system and prepare their applications and amendments at their earliest convenience. Applicants may begin to complete applications *immediately*. Applicants are also encouraged to submit their applications early during the window to ensure proper submission. Applications and amendments filed during the window will not be made available to the public until after the close of the filing window. To ensure the security of its application, it is important that the applicant shares its CDBS account passwords with only those individuals who are authorized to view and/or modify proposals in progress.

To complete the filing process, applicants must select the specific application under “Work in Progress” and then click on the “File Form” button. Applicants that have successfully filed Form 340 will immediately receive a CDBS response similar to the following:

**FCC MB – CDBS Electronic Filing
Application Reference Number: 20071019AAS
Successfully filed at Oct 19 2007 12:01AM**

Applicants that believe they have filed correctly and have not received such a message from the electronic filing system should log into their CDBS account and determine the status of the application. If the status is other than “Ready” or “Filed,” the application has NOT been properly filed and will NOT be processed.

The Commission staff will return applications and amendments not submitted in accordance with the procedures described in this Public Notice. All applications filed in this window are exempt

from filing fees. Nevertheless, the staff may be unable to process some applications due to “red light” issues.²² Applicants are encouraged to check the red light status of their FCC Registration Number (FRN) by using the following web site immediately after filing FCC Form 340 in order to avoid processing delays:

www.fcc.gov/redlight

For additional information, contact:

Assistance with FRN numbers and passwords: FRN Help Desk 1-(877) 480-3201, Option 4

Electronic filing assistance: Konrad Herling or David Trout (202) 418-2662

Legal inquiries: Irene Bleiweiss, Amy Van de Kerckhove, or Peter H. Doyle, (202) 418-2700

Engineering inquiries: James Bradshaw or Rudy Bonacci, (202) 418-2700

By: Chief, Media Bureau

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²² Applications filed in the window will be subject to the Commission’s “Red Light Rule” implementing the Debt Collection Improvement Act will be enforced. *See* 47 C.F.R. § 1.1910. Under this Rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission.