



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments

OMB Control No. 3060-0948

The Media Bureau (the “Bureau”) announces that it will accept reservation showings until November 21, 2003, for all vacant FM allotments except those for which a Notice of Proposed Rulemaking was released on or after August 7, 2000.

Background. In the *Report and Order in Reexamination of the Comparative Standards for Noncommercial Educational Applicants*,¹ the Commission relaxed the standards for reserving an FM channel for noncommercial educational (“NCE”) use. Under these revised standards, a reservation proponent must demonstrate that it is technically precluded from using a reserved channel and would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1mV/m contour of its proposed station.² The Commission limited this reservation policy to future allocation proceedings.³ The staff has reserved several allotments under these rules.

In the *NCE Second Report and Order*, the Commission extended the revised reservation policy to existing, vacant FM allotments for which we initiated an allocation proceeding, as determined by the

¹ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket 95-31, *Notice of Proposed Rulemaking*, 10 FCC Rcd 2877 (1995); *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21167 (1998); *Report and Order*, 15 FCC Rcd 7386 (2000) (“*NCE Report and Order*”); *Memorandum Opinion and Order*, 16 FCC Rcd 5074 (2001) (“*NCE MO&O*”); *Second Report and Order*, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”).

² *NCE Report and Order*, 15 FCC Rcd at 7434. See also 47 C.F.R. § 73.202(a)(1)(ii). Prior to the *NCE Report and Order*, the Commission would allot as reserved a nonreserved FM channel (channels 221 through 300) if the petitioner successfully demonstrated that no reserved channel could be used without causing prohibited interference to (1) TV channel 6 stations, or (2) foreign broadcast stations. The standards adopted in the *NCE Report and Order* therefore represent the third test for channel reservation. See 47 C.F.R. § 73.202(a)(1)(i).

³ *NCE Report and Order*, 15 FCC Rcd at 7433-34.

release of a Notice of Proposed Rulemaking (“NPRM”), before the effective date of these standards, August 7, 2000.⁴ There are approximately 500 such FM channels, including approximately 350 that were previously scheduled for auction.⁵ The pertinent vacant FM allotments are identified in Attachment A to this Public Notice.⁶

Filing Procedures. Petitioners must follow the reservation methodology set forth in paragraphs 34 through 40 of the *NCE Second Report and Order*.⁷ Reservation requests must satisfy the two distinct criteria described therein, including the submission of a complete technical preclusion showing.

For each vacant FM allotment it seeks to reserve, a party must submit an original and four copies of a paper-filed, Petition for Rulemaking to amend the FM Table of Allotments, Section 73.202(b), on or before November 21, 2003.⁸ This filing deadline will be strictly enforced. Petitions must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554, and must comply with the applicable provisions of 47 C.F.R. Section 1.401.⁹ In addition, applicants are encouraged to deliver a courtesy copy to Rolanda F. Smith, Audio Division, Room 2-B450, 445 12th Street SW, Washington, D.C. 20554.

Petitions for Rulemaking can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Petitioners are cautioned, however, that the

⁴ *NCE Second Report and Order*, 18 FCC Rcd at 6705-06. See also 47 C.F.R. § 73.202. The Commission published the *NCE Report and Order* in which it adopted these standards in the Federal Register on June 8, 2000. See 65 Fed. Reg. 36375 (2000). The effective date of these standards was sixty days thereafter, or August 7, 2000. Because the Commission’s action was based on providing NCE entities an opportunity to reserve FM channels using standards that had been previously unavailable to them, reservation showings submitted in this window are limited to this newly adopted standard.

⁵ See Public Notice, “Auction Notice and Filing Requirements for FM Broadcast Construction Permits,” 16 FCC Rcd 928, 961-68 (2001) (listing FM channels included in Auction No. 37).

⁶ Reservation showings may be submitted for allotments which parties believe may have been erroneously omitted from Attachment A. Such showings should state the basis on which the allotment is subject to the reservation procedures. All reservation showings -- whether for allotments listed in Attachment A or identified by interested parties -- must be filed by November 21, 2003. Reservation showings may not be filed against any vacant FM allotments for which an FCC Form 301 application is pending.

⁷ *NCE Second Report and Order*, 18 FCC Rcd at 6703-06.

⁸ 47 C.F.R. § 73.202(b).

⁹ See 47 C.F.R. § 1.401 which, *inter alia*, incorporates the subscription and verification requirements of 47 C.F.R. § 1.52. See also 47 C.F.R. § 1.411. In addition, the Petition for Rulemaking must contain an expression of interest that the petitioner will apply for the requested channel, if successfully reserved. See generally 47 C.F.R. §§ 1.401(a) (“any interested person” may petition for rulemaking), 1.401(c) (supportive materials required in a petition for rulemaking). See, e.g., *Fort Stockton and Sanderson, Texas*, 18 FCC Rcd 11759 (MB 2003); *Clarendon, Texas*, 18 FCC Rcd 12701 (MB 2003) (refraining from adopting an allotment when petitioner fails to make timely expression of interest).

Commission continues to experience delays in receiving U.S. Postal Service mail. All filings must be addressed to The Secretary, Office of the Secretary, Federal Communications Commission. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. Commercial overnight mail (other than U.S. Postal Service, Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. The Commission's contractor, Vistrionix, Inc., will receive hand-delivered and messenger-delivered paper filings for the Office of the Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m.

Petitions for Rulemaking will be made available to the public through the Commission's Electronic Comment Filing System ("ECFS"), as well as in the Commission's Reference Information Center, Room CY-A257, 445 12th Street SW, Washington, DC, 20554. Petitions for Rulemaking may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, Room CY-B402, 445 12th Street SW, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at qualexint@aol.com.

The staff will issue a Notice of Proposed Rulemaking for each showing that complies with the above-referenced reservation methodology.¹⁰ Parties objecting to any proffered reservation showing may file opposition comments within the time specified in the relevant Notice of Proposed Rulemaking.¹¹ Commentors are directed to the criteria specified in paragraphs 36-37 in the *NCE Second Report and Order*.¹² Counterproposals or amendments to the reservation showing as originally submitted in the Petition for Rulemaking will not be considered. The time for filing reply comments will also be specified in the Notice of Proposed Rulemaking.¹³ Comments and replies shall conform to the applicable requirements of 47 C.F.R. Sections 1.419, 1.420 (a), (b) and (c).

For further information contact Jim Bradshaw or Lisa Scanlan, Audio Division, Media Bureau at 418-2700.

Adopted by Chief, Media Bureau

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this notice. We will use the information provided to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or

¹⁰ See 47 C.F.R. §§ 1.407 (notice of proposed rulemaking issued, if appropriate), 1.412(a) (notice procedures) and 1.413 (content of notices of proposed rulemaking, including docket number assigned to the proceeding).

¹¹ See 47 C.F.R. §1.415(a) & (b).

¹² *NCE Second Report and Order*, 18 FCC Rcd at 6705.

¹³ See 47 C.F.R. § 1.415(c).

order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided will be available for public inspection.

If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested, 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 2.25 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 estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERF, Paperwork Reduction Project (3060-0948), Washington, DC 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. 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 3060-0948.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. Section 3507.