



# PUBLIC NOTICE

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## SECTION 1.65 AMENDMENT DEADLINE ESTABLISHED FOR NONCOMMERCIAL EDUCATIONAL FM AND FM TRANSLATOR STATION APPLICANTS

**A. Introduction.** In the near future, the Media Bureau (“Bureau”) will begin evaluating pending groups of mutually exclusive applications to construct new noncommercial educational (“NCE”) FM and FM translator stations under the new NCE comparative standards.<sup>1</sup> Under these standards, the Commission uses a “point system” to determine the comparatively superior applicant in each group.<sup>2</sup> Under the Commission’s rules, each applicant is responsible for the continuing accuracy of information furnished in a pending application.<sup>3</sup> Each applicant must use the procedures outlined in this public notice to report substantial changes in application information which could adversely impact its comparative position. Amendments must be filed no later than January 21, 2005.

**B. Obligation To Report Information That Will Result In Comparative Downgrading.** Under the new NCE comparative standards, each applicant must report changes to point and tiebreaker information that would *decrease* its comparative position. Each applicant also must report any change that affects its basic eligibility to hold a construction permit for an NCE station. An applicant may not, however, enhance its comparative position after the “snap-shot” date established for its application,<sup>4</sup> and therefore, an applicant should *not* report any post-snap-shot date information that would *enhance* its comparative

<sup>1</sup> See 47 C.F.R. § 73.7000 *et seq.* Initially, the Bureau will consider “closed groups” of mutually exclusive applications, *i.e.*, groups comprised of NCE proposals that conflict with each other but are no longer subject to new competing applications. Those pending NCE applications that remain subject to competing proposals will not be evaluated until a filing window is opened for this purpose. See *Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074, 5086 (2001) (“NCE MO&O”).

<sup>2</sup> See *Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000) (“NCE R&O”), *clarified*, NCE MO&O, 16 FCC Rcd 5074, *recon. denied*, 17 FCC Rcd 132 (2002) (subsequent history omitted).

<sup>3</sup> See 47 C.F.R. § 1.65.

<sup>4</sup> The snap-shot date is June 4, 2001, for “fair distribution” determinations pursuant to 47 C.F.R. § 73.7002 and most “point system” and “tiebreaker” criteria in 47 C.F.R. § 73.7003. See *Public Notice, Supplements and Settlements to Pending Closed Groups of Noncommercial Educational Broadcast Applications Due by June 4, 2001*, 16 FCC Rcd 6893 (MMB Mar. 22, 2001), extended by *Public Notice, Deadline for NCE Settlements and Supplements Extended to July 19, 2001; Date for Calculating Comparative Qualifications Remains June 4, 2001*, 16 FCC Rcd 10892 (MMB May 24, 2001). A snap-shot date of April 21, 2000 (or earlier depending on the particular group) is used, however, to determine whether an applicant will receive points pursuant to 47 C.F.R. § 73.7003(b)(4) for making the “best technical proposal” in the group. See *NCE MO&O*, 16 FCC Rcd at 5085-86.

position. *See* examples in Attachment 1. An applicant also should not file an amendment to update population coverage and local aural service information, unless the coverage and/or service information changes resulted from the applicant's amendment of its technical proposal.<sup>5</sup>

**C. Application Amendments.** All application amendments must be filed electronically via the Consolidated Database System ("CDBS") online electronic forms filing system, located at the following site: <http://www.fcc.gov/mb/elecfile.html>. Amendments will not be accepted on paper or via e-mail. Applicants filing electronic amendments to applications that were originally filed on paper should follow the same electronic filing procedures, except that such applicants must first create a new account at the electronic filing site. For technical assistance with electronic filing, applicants may call the Media Bureau Help Desk at (202) 418-2MMB. All electronic amendments must use Form 340 (FM stations) or Form 349 (FM translator stations). Major amendments will not be accepted. Amendments to information contained in the application will be available for public viewing at the CDBS public access link available at <http://www.fcc.gov/mb/elecfile.html>. Applicants need not serve copies of point system amendments on other parties. To the extent that an applicant reports any other matters of decisional significance, however, such matters should be served in accordance with Section 1.65(a) of the Commission's rules.

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<sup>5</sup> *See NCE MO&O*, 16 FCC Rcd at 5083-86. Changes occurring without action by the applicant would not decrease the applicant's comparative position.

## ATTACHMENT 1

**Example 1:** On the snap-shot date, Applicant A had five applications pending to construct other broadcast stations. These applications were subsequently dismissed pursuant to settlements. After the snap-shot date, A relocated its distant headquarters to a new “local” headquarters.

Analysis: A cannot amend its point or tiebreaker information to enhance its comparative position as of the snap-shot date. A will be evaluated as a non-local applicant, with five pending applications. To the extent that the change in headquarters reflects a change in address, A should correct its mailing address.

**Example 2:** On the snap-shot date, Applicant B was eligible to receive two points under the “local diversity” criterion.<sup>6</sup> B also was part of a state-wide network.<sup>7</sup> B properly claimed points only for the local diversity credit. B no longer qualifies for this credit because a new member of B’s board holds an attributable interest in another nearby station.

Analysis: B must amend its application to report the new board member and the resulting loss of its two-point diversity credit. B cannot amend its application to claim two-points as a statewide network. This would be treated as a prohibited enhancement because each point criterion is evaluated separately, *i.e.*, applicants may not use enhancements to “offset” the loss of points under other criteria following the snap-shot date.

**Example 3:** The chart below represents a mutually exclusive group comprised of Applicants C and D. Each applicant proposes to serve a different community. As of the snap-shot date, the 60 dBu contour of each applicant’s proposed facilities encompassed 40,000 people. Neither applicant has amended its technical proposal. However, due to population changes, C’s service contour now encompasses 30,000 people while D’s contour now encompasses 50,000 people. Additionally, the Commission recently granted a license to an unrelated entity, authorizing a new NCE FM station which would offer a first NCE service to much of C’s first service population total as of the snap-shot date.

	C	D
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Total Population within Service		
Contour -- Snap-shot Date	40,000	40,000
First Service – Snap-shot Date	12,000	4,000
Second Service – Snap-shot Date	5,000	500
Total Population within Service		
Contour – Current Date	30,000	50,000
First Service – Current Date	500	4,500
Second Service – Current Date	8,000	400

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<sup>6</sup> See 47 C.F.R. § 73.7003(b)(2).

<sup>7</sup> See *id.* § 73.7003(b)(3).

Analysis: Neither applicant should file an amendment. Both C and D would receive a “fair distribution” preference<sup>8</sup> under Section 73.7002 using the snap-shot date information. C would receive a decisive preference for first service because it would provide a first service to at least 5,000 people more than D (12,000 – 4,000 = 8,000). As a result of this decisive first service preference, no second service analysis would be undertaken.

Subsequent changes in overall population coverage or in population receiving a first or second service would not be considered in making these determinations. For example, D will be awarded a “fair distribution” preference notwithstanding the fact that D’s proposal would now provide a first and second service to less than ten percent of the population within the station’s predicted service area. Similarly, C and D would be compared without regard to the impact of the new NCE FM station on C’s first and second service population coverage totals.

**Example 4:** The facts are the same as those in Example 3 above, except that Applicant C has amended its technical proposal for good cause after the snap-shot date and is also the licensee of the area’s new NCE FM station.

Analysis: C must amend its application because its own actions have resulted in a less favorable position with respect to population coverage and fair distribution calculations. D should not amend. The staff would compare C’s current information to D’s snap-shot information. Both C and D would receive a “fair distribution” preference under Section 73.7002. C, using the less favorable current information, would no longer be eligible for a first service preference. C could receive only a second service preference based on its combined first and second service to 8,500 out of 30,000 new potential listeners. D would receive a decisive first service preference for providing a first service to 4,000 out of a 40,000 potential listeners as of the snap-shot date. As a result of this decisive first service preference, no second service analysis would be undertaken.

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<sup>8</sup> See *id.* § 73.7002(b).