



PUBLIC NOTICE

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Media Bureau Announces Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use

Notice and Filing Procedures for August 8 – September 8, 2014, NCE Reserved FM Allotment Filing Window

The Media Bureau (the “Bureau”) announces a filing window for applications for noncommercial educational (“NCE”) FM new station construction permits. The window is available for existing, vacant FM allotments on Channels 221 through 300 (the “Non-reserved FM Band”) that have been reserved for NCE use. The window will open on Friday, August 8, 2014, and close at 6:00 p.m., Eastern Time, on Monday, September 8, 2014. This Public Notice also announces procedures and filing requirements that will apply to the NCE reserved FM allotment filing window.

Scope. Non-reserved FM Band channels reserved exclusively for NCE use appear with an asterisk designation in the Table of FM Allotments, Section 73.202 of the Commission’s Rules.¹ Attachment A to this Public Notice identifies the pertinent vacant reserved FM channels available for application in this window.² Only FM allotments listed in Attachment A may be applied for at this time.

¹ 47 C.F.R. § 73.202. The Commission revised the standards for reserving an FM channel for NCE use in MM Docket 95-31. *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 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 Further Notice of Proposed Rulemaking, 17 FCC Rcd 3833 (2002); Second Report and Order, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”). The Commission will reserve a channel in the Table of FM Allotments for the exclusive use of NCE stations if a proponent for reservation demonstrates that an NCE station is technically precluded from using already-reserved channels and that it will provide needed NCE service in a given area, according to defined standards. *NCE Second Report and Order*, 18 FCC Rcd at 6703-05. See also 47 C.F.R. § 73.202(a)(1).

² The reserved FM channels listed in Attachment A ensue from case-by-case Commission allotment decisions. See *Asbury, Iowa*, Report and Order, DA 12-1486, 27 FCC Rcd 11054 (MB 2012); *Greenup, Illinois*, Report and Order, DA 13-92, 28 FCC Rcd 355 (MB 2013) (“*Greenup*”); *Van Alstyne, Texas*, Report and Order, DA 04-2508, MB Docket No. 04-132, 19 FCC Rcd 15418 (MB 2004).

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.³

Electronic Filing Instructions. Applications for new FM NCE facilities must be filed between August 8, 2014, and 6:00 p.m., Eastern Time, September 8, 2014. Applications must be filed electronically on FCC Form 340. Applicants must complete all sections of the application form. All FCC Form 340 applications and amendments must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic filing system. Instructions on using 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/online-filing>

For technical assistance with electronic filing, call the Bureau CDBS Help Desk at (202) 418-2662.

Comparative Consideration of Applications. Mutually exclusive applications for NCE stations operating on reserved channels will be resolved pursuant to the application and selection procedures in Subpart K of Part 73 of the Rules.⁴ Maximum qualifications for new applications filed in the window are established at the time of filing.⁵ 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.⁶

Technical Requirements. Specifications. When filing the FCC Form 340 application in this window, NCE applicants must specify the exact community of license, channel and class as designated in the Table of FM Allotments and specified in Attachment A.

Reservation Service Requirements. The Commission reserves a Non-Reserved FM Band allotment if the petitioner successfully demonstrates that no reserved channel could be used without causing prohibited interference to (1) TV channel 6 stations, or (2) foreign broadcast stations. In the *NCE Report and Order* the Commission adopted a third test for channel reservation.⁷ Under this third channel reservation standard, 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 ten percent of the population within the 1mV/m contour of its proposed station. In the *NCE Second Report and Order*, the Commission specifically advised prospective NCE applicants that the first or second NCE service

³ 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>.

⁴ 47 C.F. R. §§ 73.7000 - 73.7005.

⁵ See 47 C.F.R. § 73.7003(e).

⁶ *Id.*

⁷ See *supra* notes 1 and 2.

requirement remains applicable at the application stage.⁸ All of the available allotments were reserved under this standard. Therefore, all proposals must provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and that population must be at least 2000 persons.

Documentation Supporting Point System Claims. An applicant must place in its public inspection file documentation that supports each of its point system claims.⁹ An applicant also must submit copies of this documentation to the Commission.¹⁰ The Bureau strongly recommends that applicants include copies of this documentation as exhibits to their application submissions to satisfy this filing requirement.

Tie Breakers. When reporting pending applications in FCC Form 340, Section V(2), 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 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.¹¹ Each applicant should be prepared to submit supporting documentation upon Commission request.

Financial Qualifications. FCC 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.¹² Each applicant should be prepared to submit supporting documentation upon Commission request.

Application Cap. An applicant may only submit one application for each reserved FM allotment listed in Attachment A.

Existing Application. Word Power Inc. ("Word Power") previously submitted an FCC Form 301 application with its Petition for Rule Making for the Greenup, Illinois, vacant allotment.¹³ In compliance

⁸ See *NCE Second Report and Order*, 18 FCC Rcd at 6705 ("Reserved allotments will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service. In the event that all applications for a reserved band allotment fail to propose such service, the allotment will become unreserved by operation of law and subject to the Commission's competitive bidding licensing procedures."). See also 47 C.F.R. § 73.202(a)(1)(ii).

⁹ See *NCE Report and Order*, 15 FCC Rcd at 7423; see also Form 340, Section IV – Point System Factors - and Instructions for Form 340, Section IV.

¹⁰ *Id.*

¹¹ 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 RR 2d 495 (1984).

¹² See Form 340, Section II, Question 15.

¹³ File No. BNPED-20120530ALR.

with Section 73.202(a)(1)(ii),¹⁴ the Bureau found that Petitioner Word Power is technically precluded from using a reserved channel and its proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1mV/m contour of the proposed station. Accordingly, the Bureau allotted Channel 230A at Greenup, Illinois, and reserved it for NCE use.¹⁵ During the window, any other eligible applicant may file a competing FCC Form 340 application for the Greenup, Illinois, reserved vacant FM allotment. Therefore, to facilitate the full processing of all mutually exclusive NCE applications for the reserved Channel 230A Greenup, Illinois allotment, Word Power **must also submit** FCC Form 340 before the close of the window.¹⁶

Van Alstyne, Texas, Vacant Allotment. The Van Alstyne, Texas, vacant allotment on Channel 260A¹⁷ is short-spaced under Section 73.207 of the Rules,¹⁸ with respect to the co-channel Class A license (BLH-19990513KE) of station KMOO-FM, Mineola, Texas (“KMOO”). Specifically, the required spacing pursuant to Section 73.207 is 115 kilometers while the actual spacing is 112 kilometers. Furthermore, a maximum Class A facility located at the reference coordinates would cause and receive prohibited overlap to/from KMOO. Therefore, any applicant for this allotment must either maintain or increase the spacing to KMOO, or, if the spacing is reduced, must request processing pursuant to the contour overlap provisions of Section 73.215 of the Rules,¹⁹ and reduce or maintain the contour overlap with KMOO, assuming KMOO is operating with maximum Class A facilities.

Filing Freeze. Concurrently with the release of this Public Notice, the Bureau is releasing a Public Notice announcing a limited minor change application filing freeze. The Bureau will not accept minor change applications both located 250 kilometers from the reference coordinates and within the third-adjacent channel or within 250 kilometers of the reference coordinates and on the intermediate frequency of the vacant FM allotments listed in Attachment A. The freeze will continue in effect until the close of the window. Due to their potentially preclusive impact on reserved FM allotment filings, the freeze will include all reserved and non-reserved band minor change applications and amendments. The Bureau also is announcing a freeze, effective immediately, on the filing of applications proposing to modify the reference coordinates of any of the vacant reserved FM allotments listed in Attachment A, and petitions and counterproposals that propose a change in channel, class, community, or reference coordinates for any of the vacant reserved FM allotments listed in Attachment A. 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. Any application that violates this freeze will be dismissed without further consideration.

¹⁴ 47 C.F.R. § 73.202(a)(1)(ii).

¹⁵ See *Greenup*, 28 FCC Red at 355.

¹⁶ For example, legal Sections II, III, IV, V, and VI of the FCC Form 340 ask for information such as “Fair Distribution of Service Pursuant to 47 U.S.C. Section 307(b)” and “NCE Point System Factors,” which is not requested on the FCC Form 301.

¹⁷ The reference coordinates for the Van Alstyne, Texas, allotment are 33° 24' 51” N.L., 96° 28' 05” W.L. (NAD 27).

¹⁸ 47 C.F.R. § 73.207.

¹⁹ 47 C.F.R. § 73.215.

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: Lisa Scanlan, (202) 418-2700
Engineering inquiries: Rudy Bonacci, (202) 418-2722

This Public Notice contains the following Attachment:

Attachment A: Commercial Vacant Allotments Reserved for Noncommercial Educational Use

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