



# PUBLIC NOTICE

Federal Communications Commission  
45 L St., N.E.  
Washington, D.C. 20554

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

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## MEDIA BUREAU ANNOUNCES OCTOBER 30, 2020, EFFECTIVE DATE OF NEW NCE AND LPFM RULES

### New Schedule 318 LPFM Application Requirements and Interim Procedures for Filing Form 314 and 315 Assignment and Transfer of Control Applications and Schedule 340 NCE Construction Permit Applications in Light of the New Rules

#### MB Docket No. 19-3

By this Public Notice, the Media Bureau (Bureau) announces the effective date of new rules for noncommercial educational (NCE) broadcast stations and low power FM (LPFM) stations and new and interim procedures for filing four separate applications in light of the new rules. On December 11, 2019, the Commission released the *NCE LPFM Order*, which adopted changes to the Commission's rules and procedures to select and license competing applications for new and major modifications to NCE full-service stations and LPFM stations.<sup>1</sup> The new rules became effective on April 13, 2020, except for rule sections 73.865, 73.872, 73.7002(c), 73.7003, and 73.7005, which required approval by the Office of Management and Budget (OMB) because they contain information collection requirements.<sup>2</sup> The Commission submitted these information collection requirements to OMB for review under 44 U.S.C. § 3507(d)<sup>3</sup>, and we announce that OMB has approved these collections.<sup>4</sup> In the *NCE LPFM Order*, the Commission stated that these rules will become effective after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective dates.<sup>5</sup> The Commission has published this notice in the Federal Register, announcing October 30, 2020, as the effective date of the rules.<sup>6</sup> Accordingly, the rules that required OMB approval took effect on October 30, 2020.

<sup>1</sup> *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order (*NCE LPFM Order*), 34 FCC Rcd 12519 (2019); *aff'd* Order on Reconsideration, FCC 20-121 (Sept. 2, 2020). The changes were designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens.

<sup>2</sup> *NCE LPFM Order*, Final Rules, 85 FR 7880 (Feb. 12, 2020) (Federal Register summary of the *NCE LPFM Order* and rule changes not requiring OMB approval).

<sup>3</sup> Paperwork Reduction Act of 1995, Public Law 104-13; 44 U.S.C. § 3507.

<sup>4</sup> See Notice of Office of Management and Budget Action for OMB Control Nos. 3060-0029 (approved Oct. 2, 2020); 3060-0031 (approved Sept. 24, 2020); and 3060-0920 (approved Oct. 2, 2020).

<sup>5</sup> *NCE LPFM Order*, 34 FCC Rcd at para. 75.

<sup>6</sup> *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, 85 Fed. Reg. 68474 (Oct. 29, 2020).

### ***New Filing Requirements – LPFM Schedule 318<sup>7</sup>***

The Bureau has completed the update of FCC Form 2100, Schedule 318, Low Power FM Station Construction Permit Application (Schedule 318)<sup>8</sup> to reflect the new rules. The new Schedule 318 filing requirements are detailed below.

**Reasonable Site Assurance Certification.** Effective immediately, LPFM applicants filing Schedule 318 must submit a reasonable site assurance certification. In the *NCE LPFM Order*, the Commission directed the Bureau to update Schedule 318 to explain the requirement of obtaining reasonable site assurance prior to the application filing and amend Schedule 318 to add a question requiring an applicant to certify that it has obtained reasonable assurance from the tower owner, its agent, or authorized representative that its specified site will be available.<sup>9</sup>

Accordingly, LPFM applicants filing minor modification applications must now complete the site assurance certification at the Technical Certifications Section of Schedule 318.<sup>10</sup> Specifically, the applicant must certify that it has reasonable assurance in good faith that the site or proposed structure of its transmitting antenna will be available to the applicant for the applicant's intended purpose. The applicant must also specify the name of the person contacted to verify the site's availability, the person's telephone number, and whether the contact is the tower owner, agent, or authorized representative.

### ***Interim Filing Procedures – Form 314, Form 315, and NCE Schedule 340***

The Bureau is also updating the following three application forms to reflect the new NCE and LPFM rules and revised filing requirements: (1) FCC Form 314 (Application for Consent to Assignment of Broadcast Station Construction Permit or License); (2) FCC Form 315 (Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License);<sup>11</sup> and (3) FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application (Schedule 340).<sup>12</sup>

The Bureau is currently completing the IT work necessary to transition Forms 314 and 315 from the CDBS database to the LMS database. These forms will be updated imminently in LMS to reflect the new rules and filing requirements. In the meantime, applicants must continue to use the current versions

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<sup>7</sup> The Bureau is simultaneously releasing a Public Notice to announce the effective date of the new rules stemming from the *2020 LPFM Technical Order* and additional Schedule 318 requirements for LPFM Directional Antenna filings in light of these new technical rules. See *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative*, Report and Order, MB Docket Nos. 19-193, 17-105, FCC 20-53 (rel. Apr. 23, 2020) (*2020 LPFM Technical Order*).

<sup>8</sup> Schedule 318 has been converted to the Bureau's Licensing and Management System (LMS) online electronic filing system. This construction permit application must be filed using LMS. A link to the LMS system can be found at <https://enterpriseefiling.fcc.gov/dataentry/login.html>.

<sup>9</sup> See *NCE LPFM Order* at para. 59.

<sup>10</sup> These requirements will also apply to applications for new LPFM stations. Applications for new LPFM stations, however, can only be filed during filing windows, announced by the Bureau. There is no LPFM filing window open, or scheduled, at this time.

<sup>11</sup> Although the Bureau's LMS will replace the Commission's Consolidated Data Base System (CDBS) as the e-filing system for all radio and television broadcast applications, Forms 314 and 315 have not yet transitioned to LMS nor been converted to an LMS format. Form 314 and Form 315 must still be electronically filed in CDBS.

<sup>12</sup> Schedule 340 has been converted to the LMS online electronic filing system. The construction permit application must be filed using LMS.

of Forms 314 and 315 in CDBS. Because the application form changes and updated questions necessitated by the new NCE and LPFM rules are not reflected in Form 314 and 315, we direct filers to submit an attachment to the CDBS-filed Forms with the information described below.

Similarly, although the Bureau has transitioned Schedule 340 to LMS, the current version does not yet reflect the new NCE filing requirements. We therefore direct NCE filers to submit an attachment, with the information detailed below, to Schedule 340 in LMS.

Pending the finalization of Schedules 314, 315, and 340 in LMS, and effective immediately, we announce the following interim procedures for filing these three application forms:<sup>13</sup>

Form 314 and Form 315 Applications:

*NCE Stations.* Effective immediately, every proposed NCE assignee or transferee must certify on the Form 314 assignment application or Form 315 transfer of control application that the proposed acquisition comports with the new 47 CFR § 73.7005(c) diversity requirements. In the *NCE LPFM Order*, the Commission adopted its proposal to incorporate into section 73.7005<sup>14</sup> a new provision prohibiting any prevailing applicant that receives diversity of ownership points during the point system analysis<sup>15</sup> from acquiring stations which would overlap the principal community contour of its new NCE station during the period from grant of the construction permit until the station has achieved four years of on-air operations.<sup>16</sup> The restriction applies to the applicant itself, any parties to the application, and any party that acquires an attributable interest in the permittee or licensee during this period.

Accordingly, each proposed NCE assignee or transferee must attach an Exhibit to Section III-Assignee, Question 6-Multiple Ownership of Form 314 or Section IV-Transferee, Question 8-Multiple Ownership of Form 315 certifying compliance with the section 73.7005(c) diversity requirements. In the Exhibit, the assignee or transferee must state whether it has an attributable interest in an NCE FM or NCE TV station received through the award of “diversity of ownership” points in the point system analysis. If the answer is “Yes,” the assignee must include a certification, explaining that: (1) its attributable NCE FM or NCE TV station has been on the air for at least four years; and/or (2) none of the proposed assigned stations overlap the principal community contour of the NCE FM or NCE TV station received through the award of diversity points in the point system analysis.

*LPFM Stations.* Effective immediately, applicants seeking to assign or transfer a LPFM station must certify that the assignment or transfer complies with the new section 73.865 restrictions.<sup>17</sup> In the *NCE LPFM Order*, the Commission eliminated the absolute prohibition on the assignment/transfer of LPFM construction permits and the three-year holding period restriction on assigning LPFM licenses.<sup>18</sup>

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<sup>13</sup> The Bureau will issue a Public Notice shortly once the forms have been coded and updated in LMS to reflect the new rules. Once the transition is complete, these interim procedures will be obsolete.

<sup>14</sup> 47 CFR § 73.7005(c). This former “holding period” rule was renamed “Maintenance of Comparative Qualifications.”

<sup>15</sup> See 47 CFR § 73.7003 Point system selection procedures.

<sup>16</sup> See *NCE LPFM Order* at para. 12. This change was intended to safeguard the Commission’s diversity goals.

<sup>17</sup> See 47 CFR § 73.865 Assignment and transfer of LPFM permits and licenses.

<sup>18</sup> See *NCE LPFM Order* at para. 65.

To balance the relaxation of the rule, the Commission adopted safeguard provisions to ensure the LPFM service retains its noncommercial hyperlocal character and deter speculation in LPFM authorizations.<sup>19</sup>

An applicant seeking to assign or transfer an LPFM permit or license must attach an Exhibit to Section I-General Information, Question 8 of Form 314 or Section I-General Information, Question 6 of Form 315 certifying compliance with the section 73.865 restrictions. In the Exhibit, the applicant must include a statement certifying that (1) it has been at least 18 months since the station's initial construction permit was granted in accordance with 47 CFR § 73.865(c); and (2) the assignment/transfer of the LPFM authorization satisfies the consideration restrictions of 47 CFR § 73.865(a)(1). In the Exhibit, the applicant must also disclose whether the LPFM authorization was awarded by the LPFM comparative point system.<sup>20</sup> If the answer is "Yes," the applicant must state whether the station has operated on-air for at least four years since grant. If an LPFM station awarded through the LPFM point system has operated on-air for less than four years, the applicant must demonstrate in the exhibit that the transaction is consistent with the requirements of 47 CFR § 73.865(a)(3).

#### Schedule 340

*Reasonable Site Assurance Certification.* Effective immediately, all NCE applicants filing Schedule 340 must submit a reasonable site assurance certification.<sup>21</sup> We direct NCE applicants filing minor modification applications to attach a site assurance certification to the Technical Certifications Section of Schedule 340.<sup>22</sup> In the attached Exhibit, the applicant must (1) certify that it has reasonable assurance in good faith that the site or proposed structure of its transmitting antenna will be available to the applicant for the applicant's intended purpose; and (2) specify the name of the person contacted to verify the site's availability, the person's telephone number, and whether the contact is the tower owner, agent, or authorized representative.

*NCE FM Minor Modification Applications.* An applicant filing a minor modification to an NCE FM authorization, which was received based on a Section 307(b) fair distribution of service preference,<sup>23</sup> must demonstrate that any technical modification to its authorized facilities satisfies the technical requirements of 47 CFR § 73.7005(b).<sup>24</sup> This requirement only applies through the station's first four

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<sup>19</sup> See 47 CFR § 73.865. The new rules permit parties to assign or transfer LPFM permits and station licenses provided that the following safeguards are satisfied: (1) the assignment or transfer does not occur prior to 18 months from the date of issue of the initial construction permit; (2) consideration promised or received does not exceed the legitimate and prudent expenses of the assignor or transferor; (3) the assignee or transferee satisfies all eligibility criteria that apply to a LPFM license; and (4) for a period of time commencing with the grant of any permit awarded on the basis of the comparative point system provisions of section 73.872 of the rules, and continuing until the station has achieved at least four years of on-air operations, (a) the assignee or transferee must meet or exceed those points awarded to the LPFM tentative selectee, and (b) for LPFM stations selected in accordance with the involuntary time-sharing provisions of section 73.872(d) of the rules, the date the assignee or transferee was "locally established" must be the same as or earlier than the date of the most recently established local applicant in the tied MX group.

<sup>20</sup> 47 CFR § 73.872.

<sup>21</sup> See *NCE LPFM Order* at para. 59.

<sup>22</sup> Applications for new NCE stations can only be filed during filing windows, announced by the Bureau. The Bureau will issue a forthcoming Public Notice to announce the dates of the 2021 window for FM reserved band (channels 201 – 220) applications for NCE FM new station applications.

<sup>23</sup> 47 U.S.C. § 307(b); see also 47 CFR §§ 73.7002(c); 73.7005(b).

<sup>24</sup> See *NCE LPFM Order* at para. 30. The Commission relaxed section 73.7005(b), and the parallel provisions of section 73.7002(c) of its rules, to eliminate the absolute bar on any preference-related service downgrade.

years of on-air operations. If the applicant proposes to downgrade service to the area on which the section 307(b) preference was based, it must attach an exhibit to the Eligibility Certifications Section of Schedule 340, stating: “Applicant certifies that although it proposes to downgrade service to the area on which the Section 307(b) preference was based, either (1) any potential loss of first and/or second NCE service will be offset by at least first and, separately, combined first and second NCE service populations gains, *or* (2) the applicant has provided full service to that area for a period of four years of on-air operations.”

*Point System Factors.* The remaining Schedule 340 new filing requirements, which will be reflected in the Point Systems Factors Section of Schedule 340, apply solely to applications for new NCE stations. New station applications can only be filed during scheduled filing windows.<sup>25</sup> Accordingly, although these point system changes are not yet reflected in the current version of Schedule 340, interim procedures for this Section are unnecessary at this time.<sup>26</sup>

Filers who have questions regarding basic filing requirements or who need assistance logging into CDBS or LMS should contact the Commission at (877) 480-3201 (Option 2), Monday – Friday, 8:00 am – 6:00 pm ET, or submit a request online at <https://www.fcc.gov/available-support-services>. For additional information, please contact Amy Van de Kerckhove, [Amy.Vandekerckhove@fcc.gov](mailto:Amy.Vandekerckhove@fcc.gov); James Bradshaw, [James.Bradshaw@fcc.gov](mailto:James.Bradshaw@fcc.gov); or Lisa Scanlan, [Lisa.Scanlan@fcc.gov](mailto:Lisa.Scanlan@fcc.gov), of the Media Bureau, Audio Division, (202) 418-2700. Direct press inquiries to Janice Wise, [Janice.Wise@fcc.gov](mailto:Janice.Wise@fcc.gov), (202) 418-8165.

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<sup>25</sup> As noted, the Bureau will issue a forthcoming Public Notice to announce the dates of the 2021 NCE FM new station filing window. We anticipate that Schedule 340 will be updated in LMS to reflect the new rules and requirements prior to the opening of the 2021 window.

<sup>26</sup> Before the upcoming NCE FM filing window, the Bureau will issue a separate Public Notice to provide detailed information about filing procedures and the new point system requirements.