



# PUBLIC NOTICE

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## **MEDIA BUREAU ANNOUNCES NCE FM NEW STATION FILING PROCEDURES AND REQUIREMENTS FOR NOVEMBER 2 - 9, 2021, WINDOW**

### **LIMITED APPLICATION FILING FREEZE TO COMMENCE ON OCTOBER 5, 2021**

MB Docket No. 20-343

This Public Notice provides an overview of the procedures, filing requirements, and comparative selection process that will apply to the upcoming filing window for applications for noncommercial educational (NCE) FM new station construction permits. As previously announced, the window will open at 12:01 am EDT on Tuesday, November 2, 2021, and close at 6:00 pm EST on Tuesday, November 9, 2021.<sup>1</sup> The window is available for FM reserved band (channels 201 –220) proposals.<sup>2</sup>

In conjunction with this filing window, the Commission will not accept FM reserved band minor change applications or FM non-reserved band adjacent channels (channels 221 –223) and intermediate frequency (IF) (channels 254-274) minor change applications after 11:59 p.m. EDT, October 4, 2021. The freeze will continue in effect until the close of the window.

**Electronic LMS Filing Instructions.** New NCE FM applications must be filed electronically on FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application (Schedule 340) in the Media Bureau's (Bureau) Licensing and Management System (LMS).<sup>3</sup> Applicants must complete *all* sections of the Schedule 340. Paper filed applications will not be considered. There is no filing fee required for the application.<sup>4</sup>

Schedule 340 will be available for data entry in LMS on August 2, 2021. Applications must be filed between November 2, 2021, and November 9, 2021. The filing deadline will be strictly enforced. Applications submitted before November 2, 2021, or after the 6:00 pm EST November 9, 2021, application deadline (Application Deadline) will be dismissed by public notice without further consideration. We, therefore, encourage applicants to file early in the window to ensure proper and timely submission. Applications filed during the window will not be made available to the public until after the close of the filing window.

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<sup>1</sup> See *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, Public Notice, MB Docket No. 20-343, DA No. 21-463 (April 21, 2021).

<sup>2</sup> Channels 201-220 are reserved for noncommercial educational FM broadcasting. See 47 CFR § 73.501.

<sup>3</sup> The form will display in LMS as “New NCE FM Construction Permit Application.”

<sup>4</sup> See 47 CFR § 1.1116(c) (exempting applicants, permittees, or licensees of NCE broadcast stations from filing fees).

*LMS Help Center.*

Instructions on using the LMS electronic filing system are available on the Media Bureau's LMS Help Center page, which can be found at <https://www.fcc.gov/media/radio/lms-help-center>.

*How Do I File?*

The Bureau has created a detailed step-by-step instruction guide entitled “How to file an application for a New NCE FM station Construction Permit in LMS.” The guide can be found at <https://www.fcc.gov/sites/default/files/lms-340-nce-construction-permit-application-howto.pdf>.<sup>5</sup>

*Schedule 340 Instructions.*

Instructions on completing each section of the Schedule 340 are available at <https://www.fcc.gov/sites/default/files/lms-340-construction-permit-application.pdf>, or <https://www.fcc.gov/media/radio/lms-help-center>.

*LMS Data Entry Login.*

Applicants can access the LMS applicant data entry home page here: <https://enterprise.filing.fcc.gov/dataentry/login.html>, and login using the FCC Registration Number (FRN) associated with the applicant.<sup>6</sup>

For questions regarding basic filing requirements, or assistance logging into LMS or accessing Schedule 340, please contact the Commission at (877) 480-3201 (Option 2), Monday-Friday, 8:00 am-6:00 pm EST, or submit a request online at <https://www.fccprod.service-now.com/auls?id=esupport>.

**First-Time Applicants.** First time applicants should particularly note 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 locate “available” frequencies; and (4) applicants generally retain legal counsel and broadcast engineering consultants to perform frequency searches and help prepare the legal and technical portions of the applications. One source for locating consulting engineers is the Association of Federal Communications Consulting Engineers, <https://www.afcce.org/>

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<sup>5</sup> Applicants that have successfully filed Schedule 340 will receive a confirmation page that indicates “Application Submitted.” The page will provide a summary of the information in the application and will also include the Application File Number (a 10 digit number starting with zeroes).

<sup>6</sup> To submit an application, an applicant must first have, or obtain, an FRN. An FRN is a 10-digit identifying number that is assigned to entities doing business with the Commission. Applicants who do not have an FRN must register for an FRN in the Commission’s CORES (COMmission REGistration System) web page. Go to <https://www.fcc.gov/licensing-databases/commission-registration-system-fcc> and follow the links to register. Applicants must use the Updated CORES System, as the legacy system is being retired and is displayed for archival purposes only. For further assistance with CORES, applicants may view tutorial videos at <https://www.fcc.gov/licensing-databases/fcc-registration-system-cores/commission-registration-system-video-tutorials>, or call the FRN help desk from 8:00 a.m. to 6:00 p.m. EST at 1-877-480-3201. Prospective applicants can obtain an FRN immediately. We encourage them to do so.

**10-Application Limit.** An applicant may file no more than a total of 10 applications in the 2021 NCE FM filing window.<sup>7</sup> This means that a party to an application filed in the 2021 NCE FM filing window may hold attributable interests<sup>8</sup> in no more than a total of 10 applications filed in the window. If it is determined that any party to an application has an attributable interest in more than 10 applications, the Bureau will retain the 10 applications that were filed first — based on the date of application receipt — and dismiss all other applications.<sup>9</sup>

**General Schedule 340 Application Certifications.** The NCE FM new station construction permit application, Schedule 340, is certification-based, but requires applicants to document certain of their claims by submitting supporting information. Some of the required certifications are described below. Each applicant should carefully read the instructions to the Schedule 340 to ensure that, in addition to the materials detailed below, all the required information is included within its application. Each applicant bears full responsibility for submitting an accurate, complete, and timely application.

Eligibility Qualifications. Applicants for NCE stations must meet basic eligibility requirements.<sup>10</sup> Schedule 340 requires each applicant to certify that it is either a nonprofit educational institution, governmental entity other than a school, or nonprofit educational organization. Each applicant must also certify that the NCE FM station will be used for the advancement of an educational program.<sup>11</sup> Each first-time NCE FM applicant must provide an attachment showing that it has an educational objective and that the NCE FM station will be used for the advancement of an educational program.<sup>12</sup>

Financial Qualifications. Schedule 340 requires each applicant for a new NCE FM station to certify that, at the time it files its application, 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

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<sup>7</sup> See *FCC Adopts 10-Application Limit for NCE FM New Stations in Upcoming 2021 Filing Window*, Public Notice, MB Docket No. 20-343, DA 21-43 (April 21, 2021) (finding that a 10-application cap will best deter speculative filings, permit the expeditious processing of the applications filed in the window, and provide interested parties with a meaningful opportunity to file for and obtain new NCE FM station licenses).

<sup>8</sup> See 47 CFR § 73.7000 (defining “attributable interest” as “an interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to § 73.3555. Also, an interest of an entity providing more than 33% of an applicant's equity and/or debt that also either (1) supplies more than 15% of the station's weekly programming, or (2) has an attributable interest pursuant to § 73.3555 in media in the same market”); see also Form 2100, Schedule 340 Instructions at pages 5-7 (explaining “parties to the application” and “attributable interests”).

<sup>9</sup> See 47 CFR § 73.503(g).

<sup>10</sup> *Id.* § 73.503.

<sup>11</sup> See Form 2100, Schedule 340 Instructions at page 11; see also 47 CFR § 73.503(a) (“A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.”).

<sup>12</sup> The requirement that NCE licensees provide programming that advances an educational objective may be satisfied by a variety of programs, including, but not limited to, “instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children's programs such as Sesame Street that entertain as they teach.” *Comparative Standards for Noncommercial Educational Applicants*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167, 21169 (1998). In order to qualify as an educational station, however, it is not necessary that the proposed station's programming be *exclusively* educational in nature. See *Lower Cape Communications, Inc.*, Memorandum Opinion and Order, FCC 80-453, 47 RR 2d 1577, 1579 (1980); *Denny Hazen*, Letter, 23 FCC Rcd 11579 (2008). All programming on the station, however, must be noncommercial in nature, with no advertisements, and no support for or opposition to a candidate for political office.

additional funds.<sup>13</sup> Each applicant should be prepared to submit supporting documentation upon Commission request.

**Reasonable Site Assurance.** At the time it files its application, an applicant must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities.<sup>14</sup> Each NCE FM applicant filing Schedule 340 must now certify that it has obtained reasonable assurance from the tower owner, its agent, or authorized representative that its specified site will be available.<sup>15</sup> The applicant must 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.<sup>16</sup>

**Comparative Consideration of Applications.** Given the finite nature of and high demand for spectrum, the Commission cannot authorize an NCE FM station to every qualified applicant in the upcoming window. Conflicting NCE FM applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. A mutually exclusive (MX) group consists of all applications which are MX to at least one other application in the group.

The Commission's analysis of MX NCE FM applications generally consists of three main components: (1) for MX groups in which NCE FM applicants propose service to different communities, a threshold fair distribution study pursuant to Section 307(b) of the Communications Act of 1934, as amended;<sup>17</sup> (2) a point system analysis<sup>18</sup> for MX applications proposing to serve the same community, or application conflicts not resolved under the Section 307(b) analysis; and (3) if necessary, a tie-breaker determination, based on applicant-provided data and certifications.

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<sup>13</sup> See Financial Certifications Section of Schedule 340.

<sup>14</sup> See *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427, para. 7 (1974) (*Wallace*); *South Florida Broad. Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842, para. 3 (1984). Although an applicant does not need to have a binding agreement or absolute assurance of a proposed site, a mere possibility that the site will be available is not sufficient. See *Wallace*, 49 FCC 2d at 1427, para. 6.

<sup>15</sup> See Schedule 340, Technical Certifications – Reasonable Site Assurance; see also *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, 34 FCC Rcd 12519, 12542, para. 59 (2019) (*2020 NCE LPFM Order*), *aff'd* Order on Reconsideration, FCC 20-121, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration*).

<sup>16</sup> See Form 2100, Schedule 340 Instructions at page 22; see also *2020 NCE LPFM Order*, 34 FCC Rcd at 12542, para. 59 (directing the Bureau to update the Schedule 340 instructions to explain the requirement of obtaining reasonable site availability prior to the application filing and amend Schedule 340 to add a reasonable site assurance certification). If the Bureau finds that an applicant did not have reasonable site assurance at the time its application was filed, the Bureau will dismiss the application. We will not allow applicants to amend their application to cure this fatal defect. See, e.g., *NCE MX Group 430 Marfa Public Radio*, Memorandum Opinion and Order, 31 FCC Rcd 4241 (2016); *Mark Van Bergh, Esq.*, Letter Order, 26 FCC Rcd 15135 (MB 2011); see also *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Notice of Proposed Rulemaking, 34 FCC Rcd 851, 881, para. 74 (noting that during the past NCE and LPFM filing windows “applicants routinely and successfully filed petitions to deny against competing applicants for lack of site assurance, a potentially decisional allegation because the failure to obtain such assurance prior to application filing is not a curable application defect”).

<sup>17</sup> See 47 U.S.C. § 307(b); 47 CFR § 73.7002.

<sup>18</sup> See 47 CFR § 73.7003.

In advance of the filing window, the Commission amended its rules and procedures for filing NCE FM applications and selecting and licensing competing NCE FM applications.<sup>19</sup> Each applicant in the upcoming NCE FM window must complete the “Fair Distribution of Service” Section and “Point System Factors/Tie Breakers” Section of Schedule 340. An overview of the Commission’s current comparative procedures, and details on comparative information an applicant must submit, is below.<sup>20</sup>

**Section 307(b) Fair Distribution of Service Analysis.** In the event of NCE FM MX applications that would serve different communities, the Bureau, acting pursuant to delegated authority, will use first aural reception certifications, “Tribal Priority” certifications, and service area and population data certifications provided by the applicants to conduct a Section 307(b) analysis.<sup>21</sup> To enable the Bureau to conduct this analysis, each applicant must complete *all* four certifications of the Fair Distribution of Service Section of Schedule 340 by the Application Deadline. An applicant responding “Yes” to any of the certification questions *must* submit an attachment with a justification for its certification.

An NCE FM applicant qualifying for the Tribal Priority, described below in the Second Certification Section, will take precedence over all other applications in the MX group, except an applicant proposing *bona fide* first aural reception service to a greater than *de minimis* population (First Certification).<sup>22</sup> A Tribal NCE FM applicant satisfying the Tribal Priority criteria, and submitting the required documentation, will therefore not be compared to other MX NCE FM applicants on a fair distribution basis (Third and Fourth Certifications), but will become the tentative selectee. If no applicant in an MX group qualifies for either the first aural reception service preference or the Tribal Priority, the Bureau will use the applicants’ service area and population data certifications to compare first and second NCE aural radio service. The four certification questions, and the supporting documentation required for each, are described below.

First Certification: First Aural Reception Service. The first certification question asks whether the applicant proposes first overall reception service to any population or area. Applicants answering “Yes” to this question must (1) provide a map indicating the “white area” (area with no aural reception service) that will be served by their proposal, and (2) specify the area and population that will be provided with first overall aural reception service.<sup>23</sup> The applicant’s population figures must be based on the 2010

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<sup>19</sup> See 2020 NCE LPFM Order, *supra* note 15. 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. See also Media Bureau Announces October 30, 2020, Effective Date of New NCE and LPFM Rules, Public Notice, MB Docket No. 19-3, DA 20-1298 (Nov. 2, 2020).

<sup>20</sup> Before proceeding to a comparative analysis, MX applicants will have an opportunity to resolve conflicts through settlements or technical amendments. The Bureau will release a Public Notice to announce a time period for MX NCE FM applicants to enter into and file settlement agreements and to submit technical amendments to expedite the grant of applications filed in the NCE FM window. See, e.g., Window Opened to Expedite Grant of New NCE FM Station Construction Permits; Bureau Will Accept Settlements and Technical Amendments, Public Notice, 22 FCC Rcd 19438 (MB 2007) (allowing applicants to resolve their mutual exclusivity through settlement prior to point selection orders).

<sup>21</sup> The certifications enable the Bureau to consider whether service to one community over the other would best achieve the Commission’s directive to distribute radio service fairly among communities.

<sup>22</sup> See Policies to Promote Rural Radio Service and to Streamline Auction, Allotment and Assignment Policies, First Report and Order, 25 FCC Rcd 1583, 1594, para. 22 (2010) (*Rural First Report and Order*).

<sup>23</sup> See Form 2100, Schedule 340 Instructions at page 12.

*Census Block Data* from the United States Bureau of Census (Census Bureau).<sup>24</sup>

Second Certification: Tribal Priority.<sup>25</sup> The second certification question requests information relative to the “Tribal Priority” under Section 307(b), implemented in the *Rural First Report and Order*.<sup>26</sup> To qualify for the Tribal Priority, the applicant must certify that: (1) it is a Tribal Applicant; (2) the facilities proposed in the application will provide Tribal Coverage of Tribal Lands occupied by the applicant Tribe(s);<sup>27</sup> (3) the proposed community of license is located on Tribal Lands; and (4) the proposed facility would be the first local tribal-owned NCE transmission service at the proposed community of license. The applicant must meet all four criteria in order to claim the Tribal Priority.<sup>28</sup>

Applicants claiming a Tribal Priority must submit an attachment setting forth all of the information specified on pages 13-14 of the Schedule 340 instructions.<sup>29</sup>

Third and Fourth Certifications: First and Second NCE Aural Service. The third and fourth certifications ask whether the station would provide a first or second NCE radio service to a significant population.

A MX NCE FM applicant will be eligible for a Section 307(b) preference if it will provide a first or second NCE aural service (in the aggregate) to 10% of the people within the proposed station's 60 dBu contour, provided that the number of people receiving such service is at least 2,000.<sup>30</sup> If two or more applicants meet this standard, the applicant proposing to provide the greatest number of people with the highest level of service will be awarded a construction permit, if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best

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<sup>24</sup> As of the date of this Public Notice, the Census Bureau had not released the 2020 Census Block Data or announced when that data will be publicly available. Even if the Census Bureau releases the 2020 Census Block Data before the November filing window, we find there is not sufficient time to allow all interested parties to incorporate that data into their software programs in order to prepare timely applications. Based on the anticipated volume of applications that we expect to be prepared for the November filing window, we conclude many interested parties will prepare their applications before the 2020 Census Block Data is released and available for use in required software programs. Therefore, even if the updated 2020 Census Block Data becomes available before the November filing window, applicants *must* still use the 2010 Census Block Data. This will allow applicants to begin working on their calculations and application preparations immediately and not wait for the new data. Applicants should use the centroid method of counting population (counting persons within each relevant census block) and calculate contours based on the standard predicted contours established in 47 CFR § 73.313(c).

<sup>25</sup> See 47 CFR § 73.7002(b).

<sup>26</sup> See *Rural First Report and Order*, 25 FCC Rcd at 1596-97, paras. 26-27.

<sup>27</sup> See 47 CFR § 73.7000 (defining the terms “Tribe,” “Tribal Applicant,” “Tribal Coverage,” and “Tribal Lands”).

<sup>28</sup> In the event that two or more MX applicants are eligible for the Tribal Priority, the applicant providing the “most people with reserved channel NCE service to Tribal Lands will be awarded a construction permit, regardless of the magnitude of superior service or the populations of the communities of license proposed, if different.” 47 CFR § 73.7002(b).

<sup>29</sup> See Form 2100, Schedule 340 Instructions at pages 13-14; *see also* 47 CFR § 73.7002(b).

<sup>30</sup> 47 CFR § 73.7002(b); *see also Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7397-98, paras. 24-25 (2000) (*NCE Report and Order*), *vacated in part on other grounds sub nom., National Public Radio v. FCC*, 254 F.2d 226 (D.C. Cir. 2001), *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*NCE MO&O*).

applicant.<sup>31</sup> First service will be preferred over second service.<sup>32</sup> Accordingly, the Bureau will first examine the applicants' first service levels alone to determine whether one of the proposals is superior and should receive a decisive preference. If such applicants are equivalent with respect to first service, the Bureau will consider combined first and second NCE aural service population totals. The process ends when the Bureau determines that none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or that each remaining applicant proposes to serve the same community. MX applicants proposing equivalent service overall will be considered under the point system; any MX applicant not deserving a Section 307(b) preference, or deserving a lesser Section 307(b) preference than the next best applicant, will have its application dismissed.<sup>33</sup>

Applicants answering "Yes" to the third and/or fourth certification questions must submit an attachment identifying the population residing within the station's 60 dB $\mu$  service contour and the number of people receiving first, second, and aggregated first and second NCE aural service. Applicants should note the following when submitting their NCE first and second service calculations:<sup>34</sup>

- NCE first and second service calculations must include granted and unexpired construction permits for new unbuilt NCE FM stations.<sup>35</sup>
- If 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 the construction permit pursuant to program test authority and a covering license application is on file prior to the close of the filing window.
- Vacant allotments and pending applications are *not* counted in determining first and second NCE service.
- AM stations and/or FM stations that voluntarily operate with a noncommercial format on channels not specifically reserved for that purpose (i.e., non-reserved channels in the commercial band) are *not* counted in determining first and second NCE service.
- Population must be measured using the 2010 Census Block Data available from the Census Bureau.<sup>36</sup>

**Point System Selection Criteria.** Each NCE FM applicant must complete the "Point System Factors/Tie Breakers" Section of Schedule 340 by the Application Deadline. If MX NCE FM applications proceed to a point system analysis, the Commission will review the point submissions to compare the MX applications and tentatively select the application with the highest point total from each MX group for grant.<sup>37</sup> The NCE point system awards a maximum of seven merit points, based on four

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<sup>31</sup> 47 CFR § 73.7002(b).

<sup>32</sup> *Id.*

<sup>33</sup> See *Mass Media Bureau Provides Examples of Application of NCE Section 307(b) Criteria*, Public Notice, 16 FCC Rcd 10892 (2001) (providing additional information on the application of the Section 307(b) analysis to competing NCE FM proposals).

<sup>34</sup> See Form 2100, Schedule 340 Instructions at page 14.

<sup>35</sup> See, e.g., *Baker v. FCC*, 834 F.2d 181 (D.C. Cir. 1987).

<sup>36</sup> See *supra* note 24. Applicants should use the centroid method of counting population (counting persons within each of the relevant census blocks). Applicants should calculate contours based on the standard predicted contours established in 47 CFR § 73.313(c). See also Form 2100, Schedule 340 Instructions at page 14.

<sup>37</sup> The Commission has reaffirmed its longstanding one-grant policy. See *NCE Order on Reconsideration*, *supra* note 15. The Commission will *not* authorize "secondary grants" in MX NCE FM groups after the initial resolution of the MX applications.

distinct criteria: (1) established local applicant; (2) diversity of ownership; (3) state-wide network; and (4) technical parameters.<sup>38</sup> These criteria, including documentation which must be submitted to support point claims, are described in more detail below.

Established local applicant. To qualify for the three points as an “established local applicant”<sup>39</sup> an applicant must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing.<sup>40</sup> To be considered local, a non-governmental applicant must have a physical headquarters, campus, or 75% of its governing board members residing within 25 miles of the reference coordinates of the proposed community of license.<sup>41</sup> A governmental unit is considered local within its jurisdictional boundaries.

If an applicant certifies that it is an “established local applicant” it must submit substantiating documentation with its application to illustrate how it qualifies as local and established.<sup>42</sup> Examples of acceptable documentation include corporate material from the secretary of state, lists of names, addresses, and length of residence of board members and copies of governing documents requiring a 75% local governing board, or course brochures indicating that classes have been offered at a local campus for the preceding two years.

Diversity of Ownership. To qualify for the two points for “diversity of ownership,” an applicant must certify that the principal community contours of its proposed NCE FM station do not overlap with those of any other full-service radio station or non-fill in translator station<sup>43</sup> in which the applicant, or any party to the application, holds an attributable interest.<sup>44</sup>

To qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, or a statement that the applicant holds no attributable interests in any nearby radio stations.<sup>45</sup>

Divestiture Pledges. We will permit an NCE FM applicant with an overlapping attributable interest to qualify for diversity of ownership points if it commits to divest the broadcast interest or resign

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<sup>38</sup> See 47 CFR § 73.7003(b).

<sup>39</sup> *Id.* § 73.7000.

<sup>40</sup> See *id.* § 73.7003(b)(1).

<sup>41</sup> A local headquarters or residence must be a primary place of business or residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which are more easily feigned and/or present less of an opportunity for meaningful contact with the community. See *NCE Report and Order*, 15 FCC Rcd at 7410, para. 54.

<sup>42</sup> An applicant claiming points as an established local applicant must also pledge to maintain localism characteristics during the period from grant of the construction permit until the station has achieved at least four years of on-air operations.

<sup>43</sup> The NCE FM applicant must count commercial and noncommercial AM, FM, and non-fill-in FM translator stations (*i.e.*, those that extend outside the applicant's primary station's service contour). The applicant does not need to consider any attributable TV stations for purposes of claiming this point.

<sup>44</sup> See 47 CFR § 73.7003(b)(2). Parties with attributable interests are defined as the applicant, its parent, subsidiaries, their officers, and members of their governing boards. See 47 CFR § 73.7000.

<sup>45</sup> An applicant claiming points for diversity of ownership must also pledge to comply with the restrictions on station modifications and acquisitions during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. See 47 CFR § 73.7005(c); see also *2020 NCE LPFM Order*, 34 FCC Rcd at 12524, para. 12.



from the attributable positional interest.<sup>46</sup> The divestiture pledge must be submitted with the application by the close of the filing window. The applicant, however, will not be required to complete the pledged action by the close of the filing window. Rather, if the permit is awarded based on points, the actual divestiture or resignation must be completed by the time the new NCE FM station commences program test operations.<sup>47</sup>

**State-wide Network.** The Commission awards two points for certain state-wide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.<sup>48</sup> The state-wide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit. Applicants claiming points as a state-wide network must submit supporting documentation as an application exhibit.<sup>49</sup>

**Technical Parameters.** The Commission awards up to two points to an applicant that proposes the best technical proposal in an MX group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water). An applicant will receive one point if its proposed service area *and* population are 10% greater than those of the next best area and population proposals, or two points if both are 25% greater than those of the next best area and population proposals, as measured by each proposed station's predicted 60 dBu signal strength contour.<sup>50</sup> If the best technical proposal does not meet the 10% threshold, no applicant will be awarded points under this criterion.

Each applicant must include an application exhibit explaining how it calculated the technical parameters. The applicant should specify the year and blocks of census information used and the method used to determine area. Area must be measured in square kilometers and exclude significant areas of water, *e.g.*, ocean and lakes. Population should be measured using the 2010 Census Block Data available from the Census Bureau.<sup>51</sup>

**Tiebreakers.** In the event MX applicants are tied with the highest number of points, the tied applicants will proceed to a tie-breaker round.<sup>52</sup> The first tie-breaker is the number of radio or television station authorizations attributable to each applicant.<sup>53</sup> The applicant must count all attributable full service commercial and NCE radio authorizations (licenses and construction permits) and any FM translator stations providing non-fill-in service (*i.e.*, those extending a station's service area) unless identified as an existing translator to be replaced by the applied for full-service NCE FM station.<sup>54</sup> The applicant with the fewest attributable authorizations prevails.

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<sup>46</sup> See *2020 NCE LPFM Order*, 34 FCC Rcd at 12525, para. 13 (expanding the Commission's divestiture policy by recognizing full-service station divestiture pledges for comparative purposes and crediting all contingent divestiture pledges that are made and submitted by the close of the filing window).

<sup>47</sup> *Id.*

<sup>48</sup> See 47 CFR § 73.7003(b)(3).

<sup>49</sup> See Form 2100, Schedule 340 Instructions at page 16 (detailing preferred documentation to support this point claim).

<sup>50</sup> See 47 CFR § 73.7003(b)(4).

<sup>51</sup> See Form 2100, Schedule 340 Instructions at page 16; *see also supra* note 24.

<sup>52</sup> See 47 CFR § 73.7003(c).

<sup>53</sup> *Id.* 73.7003(c)(1).

<sup>54</sup> See *NCE MO&O*, 16 FCC Rcd at 5102-03, para. 85; *see also* Form 2100, Schedule 340 Instructions at page 17.

If the tie is not broken by this first factor, the Commission will apply a second tie-breaker: the number of pending radio station applications attributable to each applicant.<sup>55</sup> When reporting pending applications, applicants must include new and major change radio applications, including the subject application and all other applications filed in this window by the Application Deadline. Applicants should *not* include any requests to participate in an auction filed on Schedule 175 and other applications such as voluntary assignment of license, license renewal, and minor change in existing facilities. The tentative selectee will be the applicant with the fewest pending new and major change applications in the same service at the time of filing.<sup>56</sup>

If a tie remains after the second tie-breaker, applicants will be considered under a third and final tie-breaker criterion – prior NCE applications.<sup>57</sup> The tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license.<sup>58</sup> The applicant must submit an attachment demonstrating its qualifications under this third tie-breaker criterion.

**Timely Documentation of Comparative Qualifications.** The Schedule 340 is certification-based, but requires applicants to document certain of their claims by submitting supporting information.<sup>59</sup> We caution applicants that the basis for applicant point claims must be readily ascertainable from timely-filed application exhibits. Applicants, therefore, should review their supporting documentation thoroughly before filing.

Certifications which require the applicant to submit documentation, but which are not supported with any such timely documentation, will not be credited. For example, every applicant claiming points for diversity of ownership must certify that the proposed station's service area would not overlap that of an attributable existing station. With respect to the diversity certification, the preferred supporting documentation is a map showing no overlap, or a statement that none of the parties to the application holds an attributable interest in any other station. While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot be found to have made a valid certification and will not receive the claimed points.<sup>60</sup> The Commission will not consider documentation to support a claimed comparative point if it is submitted in an amendment after the Application Deadline.

**“Snap Shot” Date for Establishing Points and Comparing Applications.** The NCE FM applicant's qualifications for points will be initially determined “as of the closing of the filing window”

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<sup>55</sup> 47 CFR § 73.7003(c)(2).

<sup>56</sup> *Id.*

<sup>57</sup> See *2020 NCE LPFM Order*, 34 FCC Rcd at 12527-28, para. 19; 47 CFR § 73.7003(c)(3).

<sup>58</sup> *Id.*

<sup>59</sup> See *NCE Report and Order*, 15 FCC Rcd at 7423, para. 89.

<sup>60</sup> See, e.g., *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5017, para. 11 (2010) (“applicant submitting no timely documentation at all cannot be found to have made a valid certification”).

*i.e.*, the November 9, 2021, Application Deadline.<sup>61</sup> For example, NCE organizations will be considered “established” if they have operated as local entities since November 9, 2019, *i.e.*, for at least two years prior to the November 9, 2021, Application Deadline. These “snap shot” applicant characteristics establish an applicant's maximum points and its maximum position in the event of a tie-breaker. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.<sup>62</sup>

Any changes made after the Application Deadline may potentially diminish, but cannot enhance, an applicant's comparative position and point total. Therefore, the Commission will take into account any amendments that adversely affect an applicant's point total and comparative position. The Commission will *not* consider any amendments, filed after the Application Deadline, which improve an applicant's comparative position.<sup>63</sup> For example, an applicant may lose claimed points, such as the diversity of ownership points, as a result of acquiring an overlapping station after the Application Deadline. In contrast, if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.<sup>64</sup>

**Acceptability of Applications.** Following the Application Deadline, the Bureau will review all applications for compliance with the relevant technical and legal rules<sup>65</sup> and dismiss any application that is unacceptable for filing. A dismissed applicant will have *one* opportunity to file a minor curative amendment to its application and a petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*.<sup>66</sup> The amendment and petition for reconsideration must be filed within 30 days of the dismissal of the application. Please note that any such amendment must propose minor changes and comply with all relevant rules.<sup>67</sup> The Bureau staff will not reinstate the application of an applicant that is unable to cure *all* the defects (including any defects not previously identified by the Bureau staff).

**Amendments to Applications.** Following the Application Deadline, each applicant must continue to maintain the accuracy and completeness of the information in its application. Each applicant must notify the Commission, by electronically filing an amendment, of any substantial change that may be of decisional significant to the application.<sup>68</sup> For example, an applicant will be required, pursuant to section 1.65 of the rules, to update its number of authorizations (Tiebreaker Section) if/when one of its

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<sup>61</sup> See 47 CFR § 73.7003(e).

<sup>62</sup> See, e.g., *NCE MO&O*, 16 FCC Rcd at 5082-83, paras. 23-26; see also *id.* at 5083, para. 26 (“Of overall concern to us in this area is that we are comparing applications that use the same data. Reliance on information as of the close of the window will ensure that applicants have essentially a common reference date. With a common reference date and a common method of calculating population, the staff will analyze applicants on a similar basis.”).

<sup>63</sup> See 47 CFR § 73.7003(e).

<sup>64</sup> Another example of this principle is in the first tie-breaker criterion, which selects the applicant with the fewest number of broadcast authorizations at the time of filing. An applicant cannot enhance its position by selling one of its existing stations, but can diminish its position by acquiring an additional station.

<sup>65</sup> See, e.g., 47 CFR §§ 73.207, 73.316, 73.509, 73.511, 73.515, etc.

<sup>66</sup> See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984); 47 CFR § 1.106.

<sup>67</sup> Applicants may not amend their applications to increase their comparative position or enhance their fair distribution preference.

<sup>68</sup> See 47 CFR § 1.65.

pending applications is granted.<sup>69</sup>

**Filing Freeze.** A limited application filing freeze will commence on October 5, 2021, 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, Channels 221, 222, 223, and (IF channels) 254 - 274 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.

**Additional Information.** For additional information on the filing window and procedures, please contact Amy Van de Kerckhove, Amy.Vandekerckhove@fcc.gov; Arthur Doak, Arthur.Doak@fcc.gov; Rodolfo Bonacci, Rodolfo.Bonacci@fcc.gov; or Lisa Scanlan, Lisa.Scanlan@fcc.gov, of the Media Bureau, Audio Division, (202) 418-2700. Direct press inquiries to Janice Wise, Janice.Wise@fcc.gov, (202) 418-8165.

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<sup>69</sup> See, e.g., *NCE MO&O*, 16 FCC Rcd at 5083, para. 25.