

MEMORANDUM

Filing Window for Noncommercial Educational FM Stations November 2 – 9, 2021

The FCC will be opening up a rare filing window for the filing of Noncommercial Educational (“NCE”) FM applications in the noncommercial radio FM band (Channels 202-220 beginning on November 2, 2021, and closing on November 9, 2021).

Applicants will be required to file full, long-form applications (FCC Form 340) during that filing window. All applications must be filed electronically. The applications must include all pertinent information concerning ownership, and its transmitter site/engineering proposal and point eligibility. Each applicant (and its principals) will be limited to 10 applications. There is no FCC filing fee associated with these applications.

The Filing Process. There will be a number of items of information that we will need in order to assist you in getting the application on file. It will be useful to provide as much information to me as early on as possible, so that aspects of the application can be inputted on an ongoing basis, well in advance of the filing deadline.

A) The Filing Organization. Individuals are not permitted to file NCE applications. They must be filed by qualified, non-commercial entities. Unless you are a nonprofit educational institution and a governmental entity other than a school, you must be a “nonprofit educational institution” in order to apply. If you have not already formed a non-profit educational organization, this should be done *immediately*.

An exhibit will have to be prepared and filed with the FCC demonstrating how the proposed station will be used to advance an educational purpose. Your organization’s Articles of Incorporation, By-Laws, Charter, or other pertinent organizational documents must specifically permit your organization to advance an educational purpose, and must not in any way restrict the organization from advancing an educational program or complying with the Communications Act or the FCC’s rules.

I will need to see the pertinent documents prior to filing the application to ensure that the organizational documents comply with this requirement. I also will need a brief statement as to how the station, when granted, will be used to advance an “educational purpose.” This does not have to be a “detailed” explanation, but will have to be clear enough to allow the FCC to make the requisite findings.

Also, if your organization have not yet ever filed an application with the FCC previously, I need to establish an FCC Registration Number (“FRN”) to enable the application to be filed. For this, I need the organization’s Tax Identification Number as soon as possible.

B) Information Concerning Parties to the Application. I need the names and addresses of the “parties” to the application. This must include all equity holders, officers, and directors of the organization; their titles within the organization (*e.g.*, “president,” “director,”

“owner,” etc.); the percentage of voting power they each possess; and the total percentage amount of equity ownership of the total station assets they each will hold. For each such “party,” I will also need to know:

- whether they are United States citizens;
- the call signs of any other broadcast stations in which they each have an interest;
- whether (i) there are any unresolved FCC-related character issues that remain outstanding with respect to such “party” to the application; and (ii) whether any such “party” to the application has ever been the subject of an adverse finding with regard to any felony, mass media-related antitrust or unfair competition matter, fraudulent statements to another governmental unit, or discrimination matter.

C) Reasonable Assurance of Finances: Applicants for new stations must certify to their financial qualifications. An applicant for a new station must attest it has sufficient net liquid assets on hand, or committed sources of funds, to construct the proposed facility and operate for three months without additional funds. If you are applying for more than one facility, you need to have financial assurances sufficient to allow for the construction of *all* requested facilities. You need to have financial resources on hand, or from committed sources of funds to construct the station and operate for three months.

To certify, a budget for the proposed operation of the station should be prepared for your own records. The Budget should include entries for the station’s proposed Antenna System; RF Generating Equipment (*e.g.*, transmitter, and remote-control equipment); Monitoring and Test Equipment (*e.g.*, frequency monitor, modulation monitor); Program Origination Equipment (*e.g.*, studio equipment and satellite receivers); Land Costs; Studio Costs and furnishings; Legal Services; miscellaneous costs; and operational costs for the first three months of operations. Reduce the Budget to paper form, or make certain that it safely exists electronically on your computer, so that, if necessary, it can be provided to the FCC at any time.

Applicants requesting financial assistance from the National Telecommunications and Information Administration (NTIA) must certify that such assistance is being requested. Applicants should also certify whether their application is contingent upon receipt of a grant from a charitable organization, approval of a school or university budget, or an appropriation from a state, county, municipality, or other political unit or subdivision. Documentation supporting the attestation of financial qualifications need not be submitted with this application but must be available to the Commission upon request.

If you are going to rely upon bank financing to satisfy the “reasonable assurance” requirement, such a bank must be approached prior to filing, and sufficient information must be

provided to the bank in order for it to provide tentative assurances. A written document from the bank should be issued and in existence at the time the FCC application is filed. The bank letter must include information concerning the proposed amount of the loan it tentatively intends to provide (which should at least match the budget); the interest rate that will be imposed; the proposed repayment period; and the collateral that is anticipated that will be required. The loan payments dictated by the letter should be an element of the budget. The collateral should encompass terms and items that are capable of being satisfied by your organization. A sample "bank letter" that has passed Commission muster in the past is available from me upon request.

If you are going to rely upon financing from "individuals" as opposed to a banking institution, you will have to be provided with some evidence that such person or organization has the financial resources sufficient to cover your financial needs. Such information must include the individual's personal balance sheet, showing the scope of the applicant's liquid assets.

Documentation supporting the attestation of financial qualifications need not be submitted with this application but must be available for submission to the Commission upon request. Therefore, I strongly recommend that the financial documentation be assembled and maintained in your files, so that it is readily available in the event of FCC inquiry.

D) Reasonable Assurance of Site Availability. You will need to have a "reasonable assurance" that the site proposed in your application is available for your use. This does not have to rise to the level of a "lease," "purchase," or other commitment, but must at least involve an understanding that space or land is conceivably available for your project from the owner of the tower or land, and must involve some at least modest understanding concerning the expected costs for purchase or rental of space at the site. These financial figures should be included in your Budget. **The applicant must specify the name of the person contacted, the person's telephone number, and whether the contact is the tower owner, agent, or authorized representative.** If the FCC determines that an applicant did not have reasonable site assurance at the time its application was filed, the FCC will dismiss the application. This defect cannot be cured after the close of the Filing Window.

If you are planning on constructing a new tower for your project, it may be necessary to eventually obtain approval from the Federal Aviation Administration ("FAA") and clearance from the State Historical Preservation Organization ("SHPO"); and to conduct an environmental review. I have available for your use a separate Memorandum on this topic if a new tower will be constructed. If SHPO approval is needed and has not been obtained at the time the application is filed, we simply will answer "No" to the environmental question contained in the engineering portion of the application, and revisit the topic as your application gets closer to grant.

In the case of an existing tower, if the height of the existing tower is not being increased, no SHPO review will be necessary.

E) Equal Employment Opportunities. If you intend to already to employ five or more full-time employees, you will have to prepare an EEO Report. Typically, this is avoided at this time simply by asserting that it is anticipated at this time that fewer than five employees will be employed.

F) Engineering Portion of Application. The engineering portion of your application ordinarily will have to be prepared by a qualified consulting broadcast engineer. If you do not already have an engineer retained for this project, please let me know, and I will refer you to appropriate professionals with whom I have enjoyed a good working relationship in the past.

It will be necessary to find a site, frequency, and power of operation that will not cause any interference (under the FCC's current standards) to any existing station or pending application. If you are not proposing an existing transmitter site, the engineer eventually will have to identify the geographic coordinates of the site, and if you have not already identified a frequency that you are certain will qualify, the engineer will have to conduct a channel search to determine if a frequency is available in the Channel 201-220 (88.1 MHz - 91.9 MHz) band on which you can apply. Due to frequency congestion, it is fairly likely that frequencies will not be available in urbanized areas.

Even if you identify a frequency, there is no guarantee that another applicant will not also apply for the same or nearby frequency at a nearby location, such that the two applications will conflict. To help guard against that eventuality and to help ensure that you obtain a grant, it may be beneficial to have your consulting engineer seek out *additional* frequencies that may be free to be used from the location that you wish to operate. It may turn out your "backup" frequency is more easily granted once all of the applications are tendered, during the settlement window the FCC will establish.

G) Information Required for the Selection Process. If two or more applications filed during the window conflict and cannot both be granted, they are "mutually-exclusive" ("MX'ed"). If such a case, the FCC will have to decide which application is granted through use of "Section 307(b)" or the "Point System."

Section 307(b) Preferences. Your application will be granted over another application if it is given a "Section 307(b)" preference. This preference is available when an applicant will provide a first or second NCE aural service (in the aggregate) to 10% of the people within the station's 60 dBu contour, provided that the number of persons receiving such service is at least 2,000 persons. 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 the construction permit, if it will provide such service to at least 10% of the people in the 60 dBu contour *and* to at least 5,000 more people than the next best applicant, with "first NCE aural service" being preferred over "second NCE aural service."

The certification asks whether the proposed station would provide a new first or second noncommercial educational radio service to a significant population. The applicant's population figures must be based on the 2010 Census Block Data from the United States Bureau of Census. Applicants must use the centroid method of counting population (counting persons within each of the relevant census blocks). Applicants must calculate contours based on the standard predicted 60 dBu contour of the station. Applicants answering "Yes" to this preference must provide an exhibit identifying the population residing within the station's 60 dBu service contour and the number of people receiving first or second NCE aural service. First or second service to fewer than 2,000 people is considered insignificant, and a preference will not be awarded.

Most of this information will have to be compiled by your consulting engineer.

If your application is entitled to such a preference but the competing applicant is not so entitled, your application is going to be preferred, and if technically grantable, will prevail over a competing MX'ed applicant.

The Point System. If an MX'ed applicant cannot achieve a clear decisive "win" over another application under Section 307(b), above, the winning application may be chosen based on the Point System. I will need information with respect to each of these matters, as applicable, for inclusion in the application.

Point will be awarded as follows:

- If an applicant is an established local applicant (*i.e.*, has been local for at least 24 months preceding the date the application has been filed), it can receive a 3 Point Credit. For most noninstitutional NCE applicants, this localism requirement is based on the organizations' headquarters or the residences of 75% of the organization's board members.

Applicants claiming an entitlement to points under this factor must provide documentation to the FCC establishing the names, addresses, and lengths of residency of the qualifying board members.

- If no party to the application has an attributable interest in another authorized station with an overlapping principal community contour, the applicant can claim a 2 Point Credit. Documentation of the entitlement to this factor must be filed with the FCC.
- If an applicant has not claimed a credit for "localism," it can claim a 2 Point Credit if it qualifies as a state-wide network.

- An applicant that provides the best technical proposal among the competing applicants, in terms of area and population served, may be eligible for additional points. If an applicant's claimed coverage is superior to all others in terms of both area and population by at least 10%, the FCC will award a 1 Point Credit. If the proposal is superior to all others by at least 25%, the FCC will instead award a 2 Point Credit.

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 United States Bureau of Census. Again, this information and exhibit will likely have to be prepared by your consulting engineer.

In the event of a tie between MX'ed applicants after consideration of these factors, the applicant whose principals have attributable interests in the fewest number of existing radio authorizations at the time of filing will be chosen.

If a tie still remains after application of the Point System and the first tie-breaker factor, the FCC will choose the applicant whose principals have the fewest number of radio applications on file at the time of filing.

If a tie still remains between mutually exclusive applications after considering the Existing Authorizations and Pending Applications questions above, the Commission will select the applicant that can demonstrate that (1) it applied for an NCE construction permit in a prior filing window and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant with superior points, or based on a tie-breaker preference; and (2) it has been in continuous existence from the date of the previous filing window until the present, and it does not hold any NCE construction permit or license. The applicant should submit to the Commission as attachments documents demonstrating its qualifications under this tie-breaker criterion.

I realize this is a great deal of information. Each application is different, and it is impossible to provide anything other than a broad overview in this Memorandum. As specific questions arise, please contact me.