



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20-343; FCC 21-43; FRS 23867]

FCC Adopts 10-Application Limit for NCE FM New Station Applications in Upcoming 2021 Filing Window

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts a limit of 10 applications filed by any party during the upcoming 2021 window for new noncommercial educational (NCE) FM radio stations. The application cap is designed to provide a meaningful opportunity for applicants to file for new NCE FM stations and expand NCE service while, at the same time, deter speculative applications and procedural delays.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, FCC 21-43, adopted and released April 21, 2021. The full text of this document is available for download at the FCC's Electronic Document Management System (EDOCS) website at <https://www.fcc.gov/edocs> or via the FCC's Electronic Comment Filing System (ECFS) website

at <http://www.fcc.gov/ecfs> by using the search function for MB Docket No. 20-343 (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.)

SYNOPSIS

1. *Introduction.* The Commission recently announced the intention to open a 2021 filing window for FM reserved band (channels 201 – 220) applications for new noncommercial educational (NCE) FM radio stations and sought comment on a proposed limit of 10 applications filed by any party during the upcoming window. This document adopts the proposed 10-application cap on NCE FM new station applications.

2. *Background.* In 2007, before the first NCE FM filing window opened, the Commission sought comment on an application cap and subsequently established a limit of 10 NCE FM new station applications filed by any party during the October 2007 filing window. This application limit helped foster the goals of localism and diversity as reflected in the NCE FM point system, while also restricting the number of speculative or mutually exclusive (MX) applications. This, in turn, minimized the delay caused by processing complicated application chains. The 10-application cap also allowed the Commission to expeditiously process and grant thousands of applications to a wide range of local and diverse applicants, therefore promoting the rapid expansion of new NCE FM service throughout the country. In the October 2020 *Cap Comment Notice* (published at 85 FR 70569 on Nov. 5, 2020), the Commission tentatively concluded that it should also establish a 10-application limit for the upcoming 2021 NCE FM filing window.

3. In the *Cap Comment Notice*, the Commission sought comment on whether 10 applications is the appropriate limit to enable the efficient processing of applications and initiation of new NCE FM service. Although the commenters addressing the proposed cap agree that some limit is advisable, they were not in agreement on what specific limit would be most appropriate and beneficial. Specifically, while National Public Radio, Inc. (NPR) endorses the

Commission's proposed 10-application cap, REC Networks (REC) proposes a lower five-application limit, and Educational Media Foundation (EMF) recommends allowing parties to file more than 10 applications if the additional applications are for areas outside the home counties of Nielsen Audio markets.

4. *Discussion.* The Commission adopts the proposal from the *Cap Comment Notice* to establish a limit of 10 NCE FM new station applications filed by any party during the upcoming filing window. The Commission finds 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.

5. The document acknowledges that REC's proposed five-application cap could theoretically curb the number of MX applications, and therefore, have the benefit of simplifying and expediting the processing of applications. The Commission finds, however, that this benefit is outweighed by the fact that a five-application limit will also curtail the expansion of new NCE FM service, and therefore, disserve the public interest. The last NCE FM filing window was over 13 years ago, and accordingly, there is pent-up demand for new NCE FM channels, which is unlikely to be satisfied with a lower five-application cap.

6. The document acknowledges EMF's novel proposal, but concludes that the logistical and administrative challenges of implementing EMF's two-tiered approach are simply too cumbersome and create the potential for extraordinary procedural delays and the ultimate delay of new NCE FM service to the public. The Commission finds that adopting EMF's approach is not administratively feasible at this time. The time required to further revise the Commission's rules and forms to adopt the EMF proposal would significantly delay the initiation of the filing window and service to the public and outweigh any benefit from the EMF proposal.

7. The document recognizes EMF's claim that its proposal would increase NCE FM service to rural areas and allow parties to file more applications to upgrade FM translators

serving rural areas to protected full-power stations. The Commission notes, however, that EMF's proposal, which was not endorsed by any of the commenters, also has the drawback of increasing the potential for more MX groups, created by the secondary application filings, larger MX groups, and complicated application chains, which could lead to processing delays, and ultimately, delay the initiation of new NCE FM service to the public.

8. The Commission finds that the proven 10-application cap strikes the best balance of its multiple objectives of providing a meaningful opportunity for applicants to file for new NCE FM stations and expanding service while, at the same time, deterring speculative applications and procedural delays. The 10-application cap, employed during the 2007 NCE FM filing window, has proven, in practice, to be very effective.

9. The document adopts the proposal that an applicant may file no more than a total of 10 applications in the 2021 NCE FM filing window. Under existing precedent, this means that a party to an application filed in the 2021 NCE FM filing window may hold attributable interests 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 Media Bureau will retain the 10 applications that were filed first – based on the date of application receipt – and dismiss all other applications.

PROCEDURAL MATTERS

10. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis was incorporated in the initial Public Notice, *FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in Upcoming 2021 Window*, FCC 20-145. The Commission sought written public comment on the proposal in the document, including comment on the IRFA. The Commission received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

11. *Need for, and Objectives of, the 10-Application Limit.* The document adopts a limit of 10 NCE FM radio station applications filed by any party during the upcoming 2021 filing window. The Commission has determined that, absent a limit on the number of applications that a party may file in the upcoming filing window, some parties may file a large number of speculative applications, including applications that are mutually exclusive with each other, resulting in procedural delays and the delay of new NCE FM service to the public. The Commission has concluded that a limit of 10 applications for new NCE FM construction permits in the filing window is an appropriate procedural safeguard to deter speculation and permit the expeditious processing of the NCE FM applications while still allowing applicants meaningful opportunities to expand NCE FM service. The Commission believes that the adopted limit will benefit small entities.

12. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments to the IRFA filed.

13. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rule in this proceeding.

14. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental entity.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small

Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

15. *NCE FM Radio Stations.* The application limit applies to potential licensees of the NCE FM radio service. This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” The SBA has created the following small business size standard for this category: those having \$41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than \$25 million, and 43 firms had annual receipts of \$25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$41.5 million in that year, the Commission concludes that the majority of radio broadcast stations were small entities under the applicable SBA size standard. In addition, the Commission has estimated the number of NCE FM radio stations to be 4,195. NCE stations are non-profit, and therefore considered to be small entities.

16. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Commission anticipates that none of the changes adopted as a result of the document will result in an increase to the reporting and recordkeeping requirements of broadcast stations or applicants for NCE FM authorizations.

17. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the

rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

18. The Commission is directed under law to describe any alternatives it considered, including alternatives not explicitly listed above. The adopted 10-application limit is intended to benefit all small NCE entities seeking to establish a new NCE FM service on a local or regional basis by preventing mass filings of speculative applications. This limit should benefit all applicants by expediting the review and processing of applications filed during the window. Based on the record in this proceeding, the Commission concludes that a lower limit would not effectively meet the demand for new NCE FM channels, whereas a higher limit would impose unacceptable processing delays on all applicants, overriding any potential benefits to the few applicants interested in filing more than 10 applications in this window. The adopted limit does not impose any significant compliance or reporting requirements because it would merely set a limit on the number of applications for new NCE FM authorizations that a party could file during the window. Accordingly, the Commission is not aware of any alternatives that would benefit small entities.

19. *Report to Congress.* The Commission will send a copy of the document, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the document, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the document and FRFA (or summaries thereof) will also be published in the *Federal Register*.

PAPERWORK REDUCTION ACT

20. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business

Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

CONGRESSIONAL REVIEW ACT

21. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this document to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

List of Subjects in

47 CFR Part 73

Radio

Reporting and recordkeeping requirements

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

Final Rule

For the reasons set forth in the preamble, the Federal Communications Commission amends part 73 of chapter 1 of title 47 of the Code of Federal Regulations as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Section 73.503 is amended by adding paragraph (g) to read as follows:

§ 73.503 Licensing requirements and service.

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(g) *Application limit.* An applicant may file no more than a total of 10 applications in the 2021 NCE FM filing window. A party to an application filed in the 2021 NCE FM filing window may hold attributable interests, as defined in § 73.7000, 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 Media Bureau will retain the 10 applications that were filed first – based on the date of application receipt – and dismiss all other applications.

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