



# PUBLIC NOTICE

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## **MEDIA BUREAU ANNOUNCES FILING PROCEDURES AND REQUIREMENTS FOR NOVEMBER 1 - NOVEMBER 8, 2023, LOW POWER FM FILING WINDOW**

### **LIMITED APPLICATION FILING FREEZE TO COMMENCE ON SEPTEMBER 1, 2023**

This Public Notice (Notice) provides an overview of the procedures, filing requirements, and comparative selection process that will apply to the upcoming filing window for applications for Low Power FM (LPFM) new station construction permits (LPFM Applications). The Bureau will accept LPFM Applications for the entire FM band (channels 201-300) during the window. The window will open at 12:01 am EDT on Wednesday, November 1, 2023, and close at 6:00 pm EST on November 8, 2023.<sup>1</sup>

In conjunction with this filing window, the Commission will not accept LPFM and FM translator minor modification applications after 11:59 p.m. EDT, August 31, 2023. The freeze will continue in effect until the close of the window.

The Commission established the LPFM service in 2000, and has licensed 1,989 LPFM stations from the initial 2000-2001 windows and subsequent 2013 window. This will be the first LPFM filing window since 2013, and we encourage potential applicants to carefully review these filing procedures and requirements.<sup>2</sup>

**Electronic LMS Filing Instructions – Schedule 318.** Applicants must file LPFM Applications electronically on FCC Form 2100, Schedule 318, Low Power FM Station Construction Permit Application (LPFM Application) in the Media Bureau’s (Bureau) Licensing and Management System

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<sup>1</sup> See *Media Bureau Announces LPFM New Station Application Filing Window; Window Open from November 1, 2023 to November 8, 2023*, Public Notice, DA 23-531 (MB June 22, 2023).

<sup>2</sup> In 2019, the Commission amended its rules and procedures for filing LPFM applications and selecting and licensing competing LPFM applications. See *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Report and Order*), *recon. dismissed and denied*, Order on Reconsideration, 35 FCC Rcd 10180 (2020). The changes adopted were designed to reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens. In 2020, the Commission also adopted certain changes to the LPFM technical rules to improve reception and increase flexibility in transmitter siting while maintaining interference protection and the core LPFM goals of diversity and localism. 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, 35 FCC Rcd 4115 (2020).

(LMS).<sup>3</sup> Applicants must complete *all* sections of the LPFM Application. The Bureau will dismiss any LPFM Applications filed outside the LMS system, including paper filed applications. There is no filing fee required for the LPFM Application.

The LPFM Application is now available in LMS and must be used by all LPFM applicants.<sup>4</sup> Applicants may begin to prepare their applications at their earliest convenience.

Applications must be filed between November 1, 2023, and November 8, 2023. The filing deadline will be strictly enforced. Applications submitted before November 1, 2023, or after the 6:00 pm EST November 8, 2023, 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 earlier in the window, however, will not receive any preference over those filed later in the window. We will not make LPFM Applications filed during the window available to the public until after the close of the filing window.

*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>.

*Schedule 318 Instructions.*

Instructions on completing each section of the Schedule 318 are available at <https://www.fcc.gov/sites/default/files/Form318-instructions.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://enterpriseefiling.fcc.gov/dataentry/login.html>, and login using the FCC Registration Number (FRN) associated with the applicant.<sup>5</sup>

For questions regarding basic filing requirements, or assistance logging into LMS or accessing Schedule 318, 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.fcc.gov/wireless/available-support-services>.

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

<sup>4</sup> See *Media Bureau Announces Transition of Additional Filings to Licensing and Management System*, Public Notice, DA 23-600 (MB July 12, 2023).

<sup>5</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.

**Participation Requirements.** Only the following entities are eligible to file LPFM Applications: (1) a nonprofit educational organization, (2) a Tribe or Tribally-controlled entity, or (3) a state or local government or a non-government entity that will provide a noncommercial public safety radio service.<sup>6</sup> Applicants must also be “local” as that term is defined in the Commission’s rules.<sup>7</sup> Individuals may not submit an LPFM Application. Each applicant will be required to document its eligibility, as described in more detail below.

**Protection of Other Authorizations – Minimum Distance Separations.** LPFM Applications must protect all authorized FM stations,<sup>8</sup> pending applications for new and existing FM stations filed prior to the release of this Notice,<sup>9</sup> authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission’s rules.<sup>10</sup> LPFM Applications must also meet the minimum distance separation requirements and protect all authorized FM translator stations,<sup>11</sup> cutoff FM translator applications, and FM translator applications filed prior to the release of this Notice.<sup>12</sup> We clarify that, with respect to paragraph (c) of section 73.807, and for purposes of applications filed in this filing window, LPFM Applications must protect any FM translator or LPFM modification application filed, and accepted for filing, between the release of this Notice and the start of the September 1, 2023, minor modification filing freeze. Finally, LPFM applications for Channels 201 to 220 must protect and satisfy the minimum separation distances with respect to (1) all full power TV Channel 6 stations, and (2) low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.<sup>13</sup> Consistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*.<sup>14</sup>

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<sup>6</sup> See 47 CFR § 73.853. See also *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2212-15 (2000) (nonprofit and public safety applicant eligibility); *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15454-57 (2012) (Tribal applicant eligibility) (*LPFM Sixth Report and Order*).

<sup>7</sup> See 47 CFR § 73.853(b).

<sup>8</sup> LPFM Applications must protect both authorized licenses and granted construction permits for FM, LPFM, and FM translator stations.

<sup>9</sup> LPFM Applications must protect granted applications, tentatively-selected applications, and pending applications from the 2021 NCE FM filing window. An LPFM Application does not need to protect a dismissed NCE application if no petition for reconsideration has been filed and the dismissal becomes final prior to the November 8, 2023, close of the LPFM window. See 47 CFR § 1.106(f) (providing for 30 days after public notice of final Commission action for petitioners to file petitions for reconsideration); 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau's decision for the Commission on its own motion to order the record before it for review).

<sup>10</sup> 47 CFR § 73.807(a)(1).

<sup>11</sup> Authorized FM translator stations means both FM translator station licenses and granted FM translator construction permits.

<sup>12</sup> 47 CFR § 73.807(c).

<sup>13</sup> See 47 CFR § 73.825. The spacing requirements apply unless the application is accompanied by a written agreement between the LPFM applicant and each affected TV Channel 6 broadcast station concurring with the proposed LPFM facilities. See 47 CFR § 73.825(a).

<sup>14</sup> See, e.g., *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR § 73.870(c).

**Second-Adjacent Channel Spacing Waivers.** Section 3(b)(2)(A) of the Local Community Radio Act of 2010 (LCRA) authorized the Commission to waive the second-adjacent channel spacing requirements<sup>15</sup> provided that the LPFM applicant seeking such a waiver demonstrates that its proposed LPFM facilities “will not result in interference to any authorized radio service.”<sup>16</sup> We note that second-adjacent channel spacing waivers may only be requested with respect to domestic stations and not stations or allotments in Canada or Mexico. An LPFM applicant seeking such a waiver must include its waiver request with its application *and* an engineering study demonstrating that its proposed station will not cause interference to any authorized radio service.<sup>17</sup> The Bureau will dismiss any application that fails to comply with the second-adjacent channel spacing requirements without requesting a waiver, and which does not contain an engineering exhibit in support of this waiver, and the applicant will not be permitted to seek *nunc pro tunc* reinstatement of its application.<sup>18</sup> We remind applicants that the LCRA prohibits the Commission from waiving the co-channel or first-adjacent channel spacing requirements.<sup>19</sup>

**Finding an LPFM Station Channel.** Applicants may use the Bureau’s LPFM Channel Finder to help determine if a proposed transmitter site would meet minimum LPFM station spacing requirements. This internet-based utility is available on the FCC web site at: <http://www.fcc.gov/encyclopedia/low-power-fm-lpfm-channel-finder>. The site provides additional information on the LPFM service, specific rule requirements for LPFM applicants, and methods to determine the coordinates of an applicant’s proposed transmitter site. Please note that the LPFM Channel Finder tool is intended solely to assist LPFM applicants in tentatively identifying available FM channels.<sup>20</sup> There is no guarantee that channels represented as “available” will be technically acceptable at the time an application is filed. An applicant should consider using a consulting engineer or a party familiar with the LPFM technical rules to determine the technical acceptability of its application, particularly if the applicant is requesting a second-adjacent channel spacing waiver.

**Major Modification Applications.** Only applications for new LPFM stations may be filed in the upcoming filing window. The Bureau will not accept applications proposing major modifications to existing LPFM stations. A licensee seeking a major modification to an existing LPFM station authorization, however, may apply for a new station and note in the application that it is seeking a major modification. Any such application must include a statement indicating that the licensee will surrender its existing LPFM license before commencement of operation with the parameters requested in the new LPFM construction permit application. We will dismiss any proposals from existing LPFM stations that fail to include such a request. Any granted new application filed in this manner will be conditioned on the surrender of the related LPFM license. Specifically, if the application is granted, the applicant must

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<sup>15</sup> See 47 CFR § 73.807.

<sup>16</sup> Pub. L. No. 111-371, 124 Stat. 4072 (2011).

<sup>17</sup> See 47 CFR § 73.807(e).

<sup>18</sup> See, e.g., *Clifford Brown Jazz Foundation*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014) (affirming dismissal of application, without ability to amend and seek reinstatement, where applicant failed to comply with second-adjacent spacing rules and failed to include a waiver request with its application) (citing 47 CFR § 73.870(c)).

<sup>19</sup> LCRA, § 3(b)(1) (“The Federal Communications Commission shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements in effect on the date of enhancement of this Act between – (A) low power FM stations; and (B) full-service FM stations.”).

<sup>20</sup> The Bureau will update the LPFM Channel Finder on a regular basis to reflect changes in operations of existing stations.

surrender its old station license subsequent to commencement of operations with its new authorized facilities.

**Application Limitation.** Nonprofit educational organizations may not file more than one application in this window. Tribal applicants may not file more than two applications. State or local governments or a non-government entity that will provide a noncommercial public safety radio service may file more than one application. However, applicants proposing public safety or emergency services must designate a “priority” application if multiple applications are submitted. The Bureau will dismiss non-priority applications if competing applications are filed in the window. For applicants subject to the one application filing limit, any additional applications filed in this window will be treated as a “conflicting” application and dismissed pursuant to section 73.3518 of the Commission’s rules.<sup>21</sup> This restriction applies even where more than one frequency is available at the applicant’s proposed transmitter site.

**Pending NCE FM Applications.** As of the date of this Notice, the Bureau is still processing a limited number of applications for construction permits for new noncommercial educational (NCE) FM stations filed in the November 2021, NCE FM filing window.<sup>22</sup> We realize that applicants with pending NCE FM applications may wish to participate in the upcoming LPFM window if they believe they will not be granted a full-service NCE FM construction permit. Section 73.3518 of the Commission’s rules, however, prohibits an applicant from filing a subsequent inconsistent or conflicting application when a prior filed application from the same applicant remains pending and undecided.<sup>23</sup> To enable applicants with pending NCE FM applications to participate in the LPFM filing window, we hereby waive section 73.3518 of the rules for this limited purpose.<sup>24</sup> Accordingly, an applicant with a pending NCE FM application from the 2021 NCE FM filing window that applies for an LPFM authorization *must* include, with its LPFM Application, (1) a statement listing all pending NCE FM applications, and (2) a divestiture pledge authorizing the Bureau to dismiss its pending NCE FM application(s) upon grant of an LPFM construction permit application, and/or dismiss its LPFM construction permit application upon grant of any of its pending NCE FM applications.<sup>25</sup>

**General LPFM Application Certifications.** The LPFM new station construction permit application, Schedule 318, is certification-based, but requires applicants to document certain of their

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<sup>21</sup> 47 CFR § 73.3518. *See also* 47 CFR § 73.801 (making section 73.3518 applicable to LPFM stations).

<sup>22</sup> *See Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

<sup>23</sup> 47 CFR § 73.3518; *see also* 47 CFR § 73.860(a)(prohibiting a party from having an attributable interest in both an LPFM station and a full-power broadcast station).

<sup>24</sup> We believe that the unique circumstance of a new filing window for a different noncommercial service while NCE applications remain pending warrants this limited waiver of the inconsistent or conflicting applications rule for this filing window. Moreover, there are only 80 still-pending NCE FM applications, a number that is likely to decrease by the opening of this window, and this waiver, therefore, will impose a minimal burden on Commission resources. Further, the public interest will be furthered by this limited waiver because, by requiring applicants to consent to the immediate dismissal of their pending NCE FM application(s) upon grant of an LPFM construction permit, it will promote expedient resolution of both NCE FM and LPFM mutually exclusive groups.

<sup>25</sup> The Commission considers an appeal of a dismissed application as a pending proceeding. *See Premier Broadcasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 867 (1992). Thus, any applicant that has filed a petition for reconsideration or an application for review of its dismissed NCE FM application must list that dismissed application and agree to the dismissal of the petition for reconsideration or application for review upon the grant of an LPFM authorization.

claims by submitting supporting information. Some of the required certifications are described below. Each applicant should carefully read the instructions to the LPFM Application 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 LPFM stations must meet basic eligibility requirements<sup>26</sup> and certify their eligibility to own and operate an LPFM station. Each applicant must also certify that it is local.<sup>27</sup> The LPFM Application requires each applicant to certify that it is either a nonprofit educational organization, Tribe or Tribal organization, or public safety radio service. Each applicant must submit an explanatory exhibit in connection with its response. Applicants that fail to provide the required materials, detailed below, are subject to dismissal.

*Nonprofit Educational Organizations.*<sup>28</sup> These applicants must provide an attachment showing that they have an educational objective and that the LPFM station will be used for the advancement of an educational program.<sup>29</sup> Applicants should provide detailed descriptions of the nature of their proposed station programming and, if possible, program schedules.<sup>30</sup> Applicants accredited by State departments of education or recognized by regional and/or national accrediting organizations should identify the accrediting entities. Applicants also must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Any applicant that is an unincorporated association must submit documents demonstrating it is recognized in its relevant jurisdiction and that the organization meets the requirements for such an entity.<sup>31</sup>

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<sup>26</sup> See 47 CFR § 73.853.

<sup>27</sup> To qualify as local, the applicant must either (1) be physically headquartered or have a campus within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application; (2) have 75% of its board members residing within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application; (3) be a Tribe and have its Tribal Lands within the service area of the proposed LPFM station; or be a Tribal organization whose controlling Tribe has its Tribal Lands within the service area of the proposed LPFM station; or (4) propose a public safety radio service and have jurisdiction within the service area of the proposed station. See 47 CFR § 73.853(b).

<sup>28</sup> A nonprofit educational organization can be a public entity (such as a governmental agency) or a private, nonprofit entity which operates a *bona fide*, full-time school in the community where it proposes to operate. A nonprofit educational organization also can be a private, nonprofit entity such as a nonprofit foundation, corporation or association. Individuals *cannot* qualify as organizational applicants.

<sup>29</sup> See 47 CFR §§ 73.503(a); 73.801.

<sup>30</sup> The requirement to 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, or even primarily, 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.

<sup>31</sup> See, e.g., *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13397-98, para. 22 (2013).

*Tribes and Tribal Organizations.*<sup>32</sup> These applicants should provide a detailed description of the noncommercial nature of their proposed station programming and, if possible, program schedules. Applicants that are Tribal organizations must explain which Tribe or Tribes own or control them. Applicants that are Tribal organizations must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.

*Public Safety Radio Services.*<sup>33</sup> Applicants that are non-government entities – incorporated or unincorporated – must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.

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>34</sup> Each LPFM applicant filing the LPFM Application must certify that it has obtained reasonable assurance from the tower owner, its agent, or authorized representative that its specified site will be available.<sup>35</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. The failure to obtain reasonable site assurance prior to filing the application is *not* a correctable application defect.<sup>36</sup>

Electronic Signature – Authorized Party Must Sign. Depending on the nature of the applicant, the LPFM application must be electronically signed and certified as follows: (1) if a partnership, by a general partner; (2) if a corporation, by an officer; (3) for an unincorporated association, by a member who is an officer; and (4) if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction.

**Technical Parameters – Channel and Antenna Location Data.** The technical parameters (including, but not limited to the channel and the antenna location coordinates) specified in the “Channel and Facility Information” and the “Antenna Location Data” sections of the LPFM Application represent crucial technical components of the application because they determine the proposed facility's compliance with general technical rules, such as channel spacing and interference protection. We, therefore, remind

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<sup>32</sup> A Tribe is any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community, which is recognized by the federal government. See 47 CFR §§ 73.853(c) and 73.7000. A Tribal organization is a private nonprofit entity such as a nonprofit foundation, corporation or association that is 51% or more owned or controlled by a Tribe or Tribes.

<sup>33</sup> State and local governments and non-government entities may be eligible for LPFM station authorizations because they propose to provide public safety radio services under section 309(j)(2)(A) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(2)(A). In order to qualify, an applicant must not be organized for profit, must use the proposed LPFM station for public safety radio services to protect the safety of life, health, or property, and the services must not be made commercially available to the public. 47 U.S.C. § 309(j)(2)(A).

<sup>34</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>35</sup> See Schedule 318, Technical Certifications – Reasonable Site Assurance.

<sup>36</sup> See, e.g., *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Notice of Proposed Rulemaking, 34 FCC Rcd 851, 881, para. 74 (2019) (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”).

applicants to carefully review the channel and antenna location coordinates, and all data specified in these sections, to ensure the information is accurate and contains no typographical errors. Bureau staff will make technical evaluations based on the channel specified in the “Channel and Facility Information” section and the antenna location coordinates specified in the “Antenna Location Data” section and will *not* review attachments or information specified elsewhere in the application to resolve discrepancies caused by typographical or other applicant errors.<sup>37</sup>

**Comparative Consideration of Applications.** Given the finite nature of and high demand for spectrum, the Commission cannot authorize an LPFM station to every qualified applicant in the upcoming window. Conflicting LPFM applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive.<sup>38</sup> A mutually exclusive (MX) group consists of all applications which are MX to at least one other in the group. MX groups are generally compared under the LPFM point system,<sup>39</sup> described below.

**Point System Selection Criteria.** Each LPFM applicant must complete the “Point System Factors/Tie-Breakers” section of the LPFM Application by the Application Deadline. If MX LPFM applications proceed to a point system analysis, the Commission will review the point submissions to compare the MX applications and tentatively select the application(s) with the highest point total from each MX group for grant.<sup>40</sup> The LPFM point system awards a maximum of six merit points, based on six criteria, with one point awarded under each criterion: (1) established community presence of at least two years; (2) commitment to originate local programming; (3) commitment to maintain a main studio; (4) commitment both to originate local programming and to maintain a main studio; (5) diversity of ownership; and (6) Tribal applicants serving Tribal lands. These criteria, along with documentation which must be submitted to support point claims, are described in more detail below.<sup>41</sup>

1. **Established Community Presence.** The Commission awards one point to an applicant that has had an established community presence, for a period of at least two years immediately prior to the filing of the application, in the community that it proposes to serve. To qualify for this point, a nonprofit educational organization applicant must be able to certify that, during the two years prior to the application, (a) it has existed as a nonprofit educational organization, and (b) it has been physically headquartered, has had a campus, or has had 75% of its governing board members residing within 10

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<sup>37</sup> See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068 (2014) (directing staff to “make any technical and legal evaluations of, and take any actions regarding, such applications based upon the stated antenna location coordinates specified in the Tech Box, without resort to any other data in the Tech Box or elsewhere in the application or attachments. Such staff actions may include, but are not limited to, dismissal of such defective applications and refusal to accept amendments where such amendments would conflict with accurate and rule-compliant window-filed applications.”).

<sup>38</sup> When the distance between two applications does not meet the minimum distance separation requirements specified in 47 CFR § 73.807, the applications are treated as MX.

<sup>39</sup> 47 CFR § 73.872.

<sup>40</sup> *Id.*

<sup>41</sup> Before proceeding to a comparative analysis, MX applicants will have an opportunity to resolve conflicts through settlements, time-share agreements, and technical amendments. The Bureau will release a Public Notice to announce a time period for MX LPFM applicants to enter into and file settlement agreements and time-share agreements and to submit technical amendments to expedite the grant of applications filed in the LPFM window. See, e.g., *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period*, Public Notice, 28 FCC Rcd 16713 (MB 2013) (allowing applicants to resolve their mutual exclusivity prior to point selection orders).



miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside the top 50 urban markets, of the coordinates of the proposed transmitting antenna. A nonprofit educational organization awarded a point for this criterion must submit evidence of its qualifications in an application exhibit.<sup>42</sup> The evidence must demonstrate the date of commencement of the applicant's existence and the location of the applicant's headquarters, campus, or governing board members' residence during the two years prior to the application filing.<sup>43</sup> While there is some flexibility in the type of documentation a nonprofit educational organization applicant may provide, no point will be awarded to an applicant that does not timely submit the required documentation.

A Tribal applicant seeking this point need only certify that it is a Tribe and that its Tribal Lands are within the service area of the proposed LPFM station; or that it is a Tribal organization whose controlling Tribe or Tribes has its/their Tribal Lands within the service area of the proposed LPFM station. Tribal organizations created by a Tribe to apply for a LPFM construction permit are not required to have been in existence for two years.<sup>44</sup> A public safety radio applicant must only be able to certify that during the two years prior to the application it had jurisdiction within the service area of the proposed LPFM station.<sup>45</sup>

2. Local Program Origination. The Commission awards one point to an applicant that pledges to originate locally at least eight hours of programming per day. Locally originated programming is programming produced by the licensee within ten miles of the coordinates of the proposed transmitting antenna site. Such programming may include licensee produced call-in shows, music selected and played by a disc jockey present on site, broadcasts of events at local schools, and broadcasts of musical performances at a local studio or festival, whether recorded or live.<sup>46</sup>

3. Main Studio. The Commission awards one point to an applicant that pledges to maintain a publicly accessible main studio that has local origination capability, is reachable by telephone, is staffed at least 20 hours per week between 7 a.m. and 10 p.m., and is located within 16.1 km (10 miles) of the station's proposed transmitting antenna site for applicants in the top 50 urban markets and within 32.1 km (20 miles) for applicants outside the top 50 urban markets. To be awarded the main studio point, the applicant must specify the proposed address and telephone number for the proposed main studio in the Schedule 318 at the time of filing the application.<sup>47</sup>

4. Local Program Origination and Main Studio. The Commission awards one point to an applicant that can certify that it qualifies for one point under both the local program origination and the main studio criteria described in (2) and (3) above.<sup>48</sup>

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<sup>42</sup> See 47 CFR §§ 73.872(b)(1); 73.853(b)(1)-(2).

<sup>43</sup> Such evidence may consist of copies of corporate charters, articles of incorporation, association, or partnership, bylaws, or other written instruments filed with the appropriate governmental agency (e.g., Secretary of State) documenting the applicant's period of existence.

<sup>44</sup> See 47 CFR §§ 73.872(b)(1); 73.853(b)(4).

<sup>45</sup> See 47 CFR §§ 73.872(b)(1); 73.853(b)(3).

<sup>46</sup> 47 CFR § 73.872(b)(2).

<sup>47</sup> 47 CFR § 73.872(b)(3).

<sup>48</sup> 47 CFR § 73.872(b)(4).

5. Diversity of Ownership. The Commission awards one point for diversity of ownership (the “new entrant” point) to an applicant that can certify that it holds no attributable interests in any other broadcast station.<sup>49</sup>

*Divestiture Pledges.* Any applicant, including a national organization, however, can qualify for a new entrant point if it submits in its LPFM application, a commitment to divest all of its existing media interests (both owned and attributable).<sup>50</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 construction permit is awarded based on points, the actual divestiture must be completed by the time the new LPFM station commences program test operations.<sup>51</sup>

6. Tribal Applicants Serving Tribal Lands. The Commission awards one point to a Tribal Applicant proposing to locate its transmitting antenna site on its “Tribal Lands,” as defined in section 73.7000 of the rules.<sup>52</sup>

The Commission tallies the total number of points awarded to each mutually exclusive applicant. The applicant(s) with the highest score in an MX group is designated the “tentative selectee.” Applicants tied for the highest point total in a MX group are subject to voluntary and involuntary time-sharing, discussed below.

**Voluntary and Involuntary Time-Sharing Agreements.** If MX applicants have the same point total, no more than three of the tied applicants may propose to share use of the frequency by electronically submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal.<sup>53</sup> Such proposals shall be treated as minor amendments to the time-share proponents' applications and shall become part of the terms of the station authorization.

LPFM applicants may begin to communicate and collaborate immediately on aggregating their points and entering into voluntary time-sharing agreements.<sup>54</sup> Applicants that enter into voluntary time-

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<sup>49</sup> 47 CFR § 73.872(b)(5). Although a broadcast interest of a national organization will not be attributed to the local chapter if the local chapter “is separately incorporated and has a distinct local presence and mission” (47 CFR § 73.858(b)), “local chapters” of larger organizations that hold broadcast interests do not qualify for a “new entrant” point. Any broadcast interests held by the “parent” organization are considered attributable for the purposes of this criterion only. Similarly, although a college or university with non-student run broadcast interests may apply for a student-run LPFM station (47 CFR § 73.860(d)), the broadcast interests of the university or college are attributable for purposes of the “new entrant” point. *See, e.g., Sixth Report and Order*, 27 FCC Rcd at 15459. Finally, although a director of an LPFM applicant may hold otherwise attributable interests in a broadcast licensee or media entity without making the LPFM applicant ineligible for a license, provided that the director recuses himself/herself from any matters affecting the LPFM station (47 CFR § 73.858(a)), the director’s broadcast interests are still considered attributable to the LPFM applicant for the purpose of the “new entrant” point.

<sup>50</sup> *See, e.g., Creation of Low Power Radio Service*, Sixth Order on Reconsideration, 28 FCC Rcd 14489, n.26 (2013).

<sup>51</sup> *Id.*

<sup>52</sup> 47 CFR § 73.872(b)(6); *see also* 47 CFR § 73.853(c) (defining a “Tribal Applicant” as a “Tribe or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes”); 47 CFR § 73.7000.

<sup>53</sup> 47 CFR § 73.872(c).

<sup>54</sup> *Id.*; *see also NCE LPFM Report and Order*, 34 FCC Rcd at 12535 (amending the rules to permit LPFM and point aggregation discussions and agreements during the application process). The Commission explained that “by (continued....)”

sharing agreements prior to the tentative selectee designations, however, must condition the agreement on each applicant becoming a tentative selectee and each applicant having the basic qualifications to receive grant of its application. Although applicants may collaborate with each other at any time, any time-share proposal may *only* be electronically submitted within 90 days after the release of the Public Notice announcing the tentative selectees.<sup>55</sup>

Following the tentative selectee designations, if the tied MX applicants do not enter into voluntary time-share agreements within the time allotted, the Commission will assign involuntary time-sharing arrangements to no more than three of the tied applicants in each MX Group.<sup>56</sup>

**Timely Documentation of Comparative Qualifications.** The LPFM Application is certification-based, but requires applicants to document certain of their claims by submitting supporting information. 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. 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. The Commission will not consider documentation to support a claimed comparative point if it is submitted in an amendment after the Application Deadline.

The Commission also will not accept a showing or a comparative pledge made after the close of such filing window. For instance, if an applicant certifies that it does not qualify for a point under one of the point system factors by answering “No” to one of the questions, it cannot later amend its application to respond “Yes” to that question. 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.

**“Snap Shot” Date for Establishing Points and Comparing Applications.** The LPFM applicant's qualifications for points will be initially determined “as of the closing of the filing window” *i.e.*, the November 8, 2023, Application Deadline. For example, nonprofit educational organizations will be considered “established” if they have operated as local entities since November 8, 2021, *i.e.*, for at least two years prior to the November 8, 2023, Application Deadline. These “snap shot” applicant characteristics establish an applicant's maximum points and its maximum position. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.

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. For example, an applicant may lose claimed points, such as the diversity of ownership point, as a result of acquiring a

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allowing organizations interested in filing an LPFM application the leeway to communicate with other eligible organizations, they can maximize their chances of acquiring LPFM construction permits and explore potential time-share construction and operating efficiencies.”) *Id.*

<sup>55</sup> 47 CFR 73.872(c).

<sup>56</sup> See 47 CFR § 73.872(d). In the case of involuntary time-sharing, tied MX applicants simultaneously and confidentially submit their preferred time slots to the Commission. These procedures will be explained in detail in future Public Notices.

station after the Application Deadline. The Commission will *not* consider any amendments, filed after the Application Deadline, which improve an applicant's comparative position.

**Acceptability of Applications.** Following the Application Deadline, the Bureau will review applications for compliance with the relevant technical and legal rules 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>57</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>58</sup> Applicants should carefully review any curative amendment to ensure the amendment corrects any and all application defects. The Bureau staff will not reinstate the application of an applicant that is unable to cure *all* the acceptability defects (including any defects not previously identified by the Bureau staff).

**Petitions to Deny.** Once a singleton LPFM Application is found to be legally and technically acceptable, the application will be accepted for filing, which starts a 30-day period for filing petitions to deny.<sup>59</sup> Similarly, once an MX LPFM Application is designated by the Commission as a tentative selectee, the LPFM Application will be simultaneously accepted for filing, triggering the 30-day petition to deny period. Petitions to deny must be filed in accordance with the procedures set forth in section 73.3584 of the rules.<sup>60</sup> In either the singleton or MX scenario, the Bureau will not review and consider petitions to deny, or any objections, filed prior to the designated 30-day petition to deny period.

**Local Public Notice Requirements.** If and when an LPFM Application is accepted for filing, the LPFM applicant must provide a public notice to inform its local community about its proposal.<sup>61</sup> The initial filing of an LPFM Application in the window does not trigger the local public notice requirements. Rather, the Commission or Bureau's subsequent acceptance for filing of an LPFM Application starts an applicant's local public notice obligations.<sup>62</sup> Specifically, once an LPFM Application is accepted for filing, the applicant must give local notice by posting notice online, either (1) on the station website or a website affiliated with the station, the applicant, or its parent entity, or (2) on a publicly accessible, locally targeted website.<sup>63</sup> The notice must be posted for 30 consecutive days following the acceptance of the LPFM Application for filing.<sup>64</sup>

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<sup>57</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>58</sup> Applicants may not amend their applications to increase their comparative position.

<sup>59</sup> The Public Notice announcing the acceptance of an application triggers the start of the 30-day petition to deny period. See 47 CFR § 73.870(d).

<sup>60</sup> 47 CFR § 73.3584. An applicant may file an opposition, and the petitioner may file a reply, within the times prescribed by the rules.

<sup>61</sup> See 47 CFR § 73.3580.

<sup>62</sup> Once the Bureau determines that a singleton LPFM Application is legally and technically acceptable, it will accept the application for filing by Public Notice. When the Commission designates an MX LPFM Application as a tentative selectee, it will simultaneously accept the application for filing by Public Notice.

<sup>63</sup> See 47 CFR §§ 73.3580(a), (b)(2).

<sup>64</sup> *Id.* The applicant must post the online notice no earlier than the date of release of the acceptance for filing public notice, and not later than five business days following release of the acceptance public notice. *Id.* at § 73.3580(b)(2)(iv).

**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 significance to the application.<sup>65</sup>

**Filing Freeze.** A limited application filing freeze will commence at 12:01 a.m on Friday, September 1, 2023, and continue until the close of the window. The freeze will include all LPFM and FM translator minor change applications. 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 on the LPFM service and LPFM station licensing procedures may be found at: <https://www.fcc.gov/media/radio/lpfm>.

For additional information on the filing window, contact James Bradshaw, [James.Bradshaw@fcc.gov](mailto:James.Bradshaw@fcc.gov); Alexander Sanjenis, [Alexander.Sanjenis@fcc.gov](mailto:Alexander.Sanjenis@fcc.gov); Lisa Scanlan, [Lisa.Scanlan@fcc.gov](mailto:Lisa.Scanlan@fcc.gov); or Amy Van de Kerckhove, [Amy.Vandekerckhove@fcc.gov](mailto:Amy.Vandekerckhove@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>65</sup> See 47 CFR § 1.65.