

THE WINDOWS ARE
COMING
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BROWN BROADCAST SERVICES

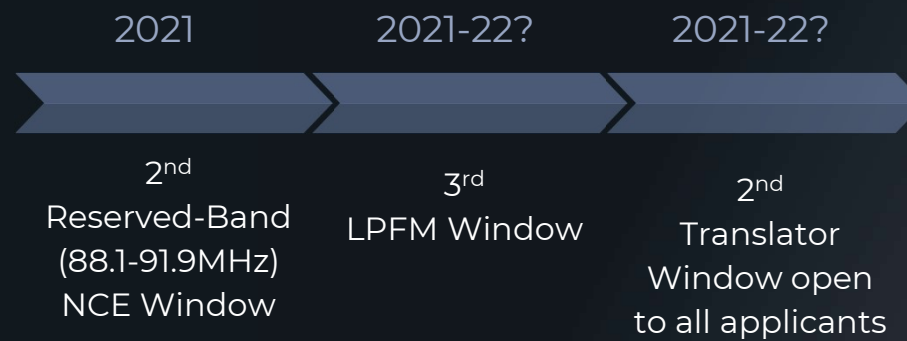
This Presentation Will Cover

- Schedules for new Full-Power NCE and LPFM Filing Windows
- Who Can Apply
- Interference Requirements
- Any Spectrum Left?
- Expanding Your NCE Group, or Transitioning from LPFM to Full-Power
- The Point System & New Rules
- Strategies for Success
- Q & A



Schedules & Deadlines

Possible Schedule



The Window

- The Windows will be announced at least 30 days before they open
- In 2007, the NCE Window was announced 6 months in advance, but that may not be the case this time
- Typically all non-window applications are frozen 30 days before a Window
 - If you're looking to change or upgrade your existing NCE station, your last chance to do it *might* be in the next 60-90 days
- The Window itself may last 5-10 days.
 - No early or late filing.
 - No viewing of other applications until Window is closed
- Most errors cannot be fixed once window is closed.
- Post-window amendments can only degrade, not enhance, an applicant's competitive position



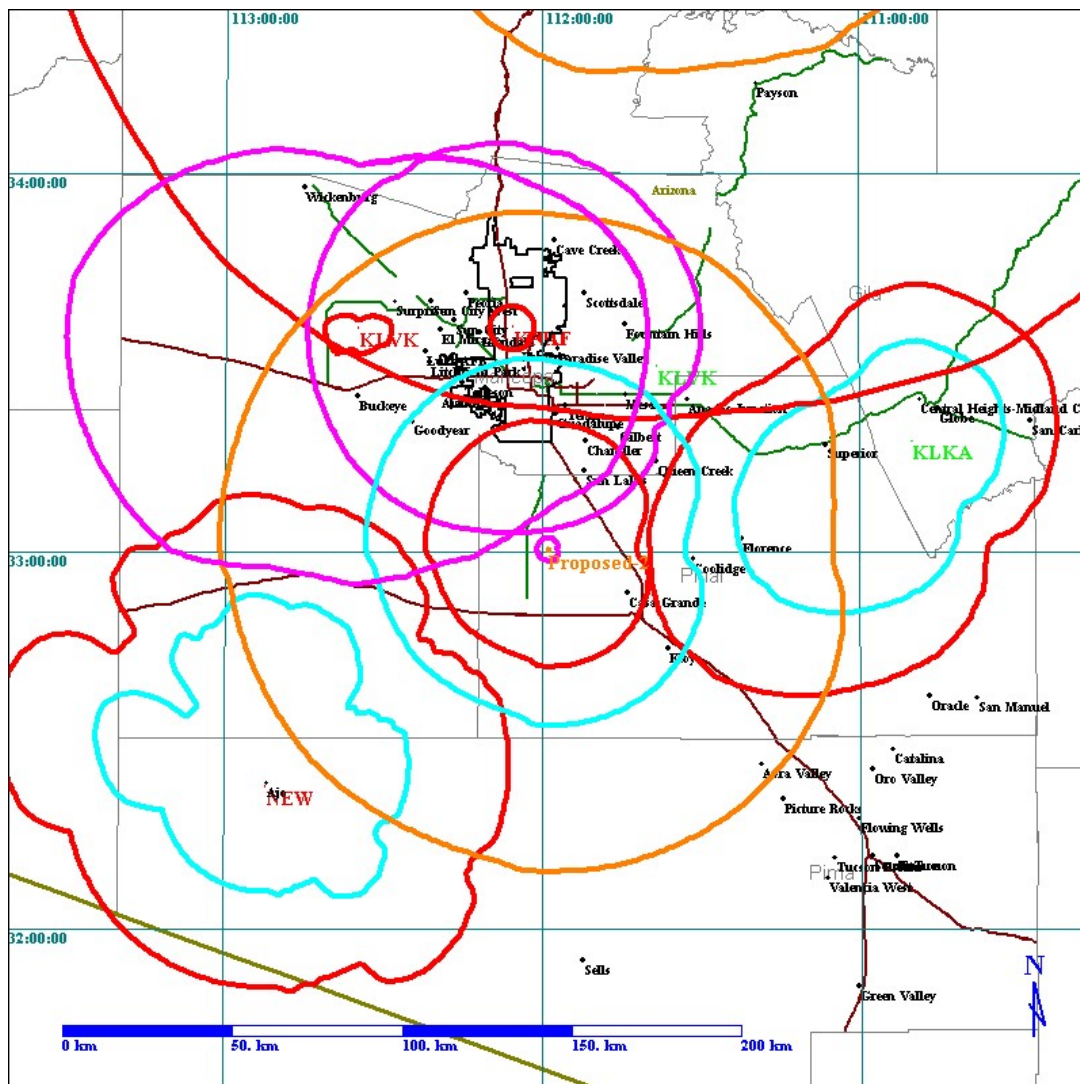
Who Can
Apply

Applicant Eligibility & Limits

- Any state-registered non-profit entity; 501c3 status NOT required
- Some states recognize unincorporated non-profit entities, but this is asking for trouble if you are challenged
- State-recognized educational institutions, including for-profit schools
- Religious organizations and congregations
- Government entities, including tribal entities
- 75% or more of board must be U.S. Citizens (with possible exceptions)
- LPFM: Applicant MUST be local. 75% of board, or organization headquarters must be within 10 miles (in top-50 urban areas), or 20 miles from the transmitter site
- NCE: Applicant does NOT have to be local, but it helps with the Points

Applicant Eligibility & Limits (cont.)

- LPFM: For a “Public-Safety” Purpose: no limits
 - Programming must be public safety, not entertainment or public affairs
 - Tribal Entities: 2 LPFM stations plus 4 translators or boosters
 - Everyone Else: 1 LPFM station plus 2 translators or boosters
 - Other than above: no “attributable interest” in any other broadcast stations (some limited exceptions), or daily papers
 - Local chapters (with a local board) must be insulated from the attributable interests of the national organization
- NCE: No limits as to total number of stations owned
 - There will likely be an application limit in the Window – probably 10
- **NEW:** The applicant must submit contact information for their “reasonable assurance” of a tower site. This should be in writing from the tower owner or manager, ideally in the form of a signed letter



Interference Requirements

NCE Interference Requirements

- NCE stations are 100 watts to 100,000 watts, covering a 3.5 – 57 mile radius, on average
- Applicants must show lack of interference caused AND received to co-channel, 1st, 2nd, & 3rd-adjacent stations (+ and – 600kHz)
 - Protection is demonstrated by lack of protected and interfering contour overlaps
 - Directional antennas can help shoehorn you in
 - Minimum kilometrage spacings also required to “intermediate frequency” stations
 - Protection is still required to full-power Television Channel-6 stations. The sunseting of this requirement is on hold
- NCE Channel finders are mostly useless. A study by a good engineer can determine availability

LPFM Interference Requirements

- LPFM: LPFM stations are 100 watts equivalent at 30m (98ft) above-average terrain (1 watt minimum)
- Coverage is 3.5 miles radius, average
 - With favorable terrain, real-world coverage can be better
 - With incoming interference, coverage can be much worse
- LPFM applicants need to show lack of interference CAUSED to co-channel, 1st & 2nd-adjacent stations, using a kilometrage spacing matrix
 - Alternately, 2nd-adjacent protection can be shown by lack of computed signal-strength interference to “populated areas” (“2nd-adjacent waiver”)
- LPFM’s are NOT protected from incoming interference from full-power stations. This can be a serious problem
- Channel Finders can sometimes be useful, but not for a final determination

LPFM Spacing Matrix Chart

Station class protected by LPFM	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility	Required
LPFM	24	24	14	14	None
D	24	24	13	13	6
A	67	92	56	56	29
B1	87	119	74	74	46
B	112	143	97	97	67
C3	78	119	67	67	40
C2	91	143	80	84	53
C1	111	178	100	111	73
C0	122	193	111	130	84
C	130	203	120	142	93



Any Spectrum
Left?

NCE: *Anything Left?*

- NCE: Signals that can cover Top-250 Metros (100k or larger) are long gone in most cases.
 - There are a few exceptions
- With good line-of-sight, distant “rim shots” can sometimes work
- Construction Permits that were never built may present some opportunities.
 - e.g.: St. George, UT

LPFM: *Anything Left?*

- There are available channels in many more places than NCE
 - Pickings are still slim in urban areas
- If there are no available channels, LPFM applicants should check for Silent LPFMs or translators that are still listed as being licensed (but didn't notify the FCC)
 - If they've been off the air for much longer than the one-year statutory limit, we've had success in convincing them to voluntarily dismiss



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Expand Your **NCE Group**

- With the demise of the Main Studio Rules, it's easier than ever for existing NCE stations to add “satellite” stations, with little hassle.
 - No need to obtain a “main studio waiver”
- NCE satellite stations can be operated like translators, but with the long-term security and interference protection of a full-power station.
- Rural listeners, while less numerous, can be very loyal supporters. They have far fewer choices and distractions.

Transition LPFM to NCE

- There is no direct upgrade path from LPFM to NCE, but they can “trade up”.
- LPFM licensees can apply for one or more NCE stations, with a properly-worded divestiture pledge
- The LPFM can be retained and operated up to the moment that the NCE station begins regular operations
- A good number of LPFM stations have made this transition



The Point System & New Rules

After the NCE Window Closes

- If past procedures are followed again, the FCC will open an initial NCE Settlement Window before even announcing the competing MX (Mutually Exclusive) groups
 - Your engineer should be able to pre-determine your MX group status
 - The MX groups can form long daisy chains. In some cases, dozens of stations can be in the chain
- MX applicants are allowed to submit unilateral technical solutions, settlements with other applicants, or voluntary time-share agreements
 - Voluntary settlements can include payoffs, limited to the “reasonable and prudent” expenses in filing
- Eventually, the FCC will announce the remaining MX Groups
 - Settlements & solutions will continue to be accepted for a while
- If no settlements or solutions are offered, the FCC will begin judging the applicants on the Point System, and only ONE applicant per MX group will be granted

NCE “Threshold Determination”

- Threshold Determinations are made before the Point Systems
- A Tribal Applicant meeting a convoluted set of requirements, trumps everything else.
- Next is First NCE Service: An applicant wins if it provides significantly greater (+5000) first NCE population coverage than its next closest competitor *proposing to serve a different community*.
- Next is First-plus-Second NCE Service: An applicant wins if it provides significantly greater first-plus-second NCE population coverage than its next closest competitor *proposing to serve a different community*.
 - Must build “substantially as proposed” and maintain for 4 years
- If there still is no winner, applicants proceed to the Point System

NCE Point System

- **7 Total Points** possible
- Established Local Applicant – **3 Points**
 - 2+ years continuously having a headquarters or 75% of the board within 25 miles of the chosen Community of License
 - Governments are “local” throughout their jurisdiction
- Diversity of Ownership – **2 Points**
 - No 70dBu overlap with any other radio interests
 - **NEW** Divestiture pledges accepted
 - School or University districts can qualify with different rules...
- Technical Superiority – **1 or 2 Points**
 - 10% greater area & population than the next best applicant – 1 point
 - 25% greater area & pop – 2 points
- After Window closes, points cannot be increased or “fixed”

NCE Tie Breakers

- Tie Breakers:
 - Fewest other stations or CPs
 - Fewest pending applications
 - **NEW** Stations that applied for an NCE station in a previous window, but lost on points or tie-breakers, can claim the last tie-breaker.
 - The applicant must have been in continuous legal existence since the previous filing
- If still tied, and no voluntary settlement or voluntary time-share is submitted, a time share is *imposed* with the 3 oldest applicants

More NCE



- Flexibility in Changing Sites:
 - An applicant which prevailed on 1st and 2nd NCE service, can change or move the facility and lose some coverage, as long as it is offset by coverage gains elsewhere. These changes can be done either before or after the initial build-out.
 - Previously, grantees were *locked* into serving *exactly the same group of 1st/2nd-service population* for 4 years. (KGUA, Gualala CA (Peggy Berryhill) almost lost a station on this)
- Changes to Board while application is pending:
 - Board changes of more than 50% are no longer fatal to a pending application, as long as it is sufficiently gradual. (KBOO lost a potential station in Chehalis WA to this)

LPFM Point System

- Promise to provide 8 Hours of daily local programming – **1 Point**
- Promise to provide a publically-accessible Main Studio within 10miles (top-50 urban areas), or 20miles of transmitter – **1 Point**
- Pledging both of the above – **1 Point**
- Established Community Presence for at least 2 continous years – **1 Point**
- No Attributable Interest in any other broadcast station – **1 Point**
- Tribal Applicant proposed to serve Tribal Lands – **1 Point**
- No LPFM Tie Breakers
- 2 or 3 applicants that are tied with the Most Points can enter into a point-sharing aggregation agreement, in an attempt to beat other applicants or aggregations

LPFM Point System (cont.)

- Technical solutions, voluntarily settlements, payoffs, and Time Shares with up to 3 stations, can be proposed
- With no winner and no voluntary settlement, FCC will impose a non-renewable concurrent Time Share to the 3 oldest applicants

Holding Periods

- **NCE:** First 4 years of **continuous operation:** For a station that won on points, the station can be transferred only to another entity that possesses (and promises to retain) at least as many points.
- For those that won on 1st & 2nd NCE service: Must maintain that service for 4 years
- **LPFM – NEW:** First 18 months of the **Construction Permit:** No transfers allowed
- First 4 years of **operation:** For a station won on points, it can be transferred only to an entity that possesses at least as many points



Strategies for Success

Think Big & **Avoid Mistakes**

- NCE:
 - Those that prevail are usually local and established for 2 years, propose serving underserved areas, have no other stations (or at least no other overlapping stations), and propose as large a facility as possible
 - Be sure it's practical to build, and that you can afford the tower rent. There are several winners in the western states that were too ambitious and never got built
 - The 2nd place winners had no recourse
- LPFM:
 - Get all the points possible
- ALL:

Get Good Help

- The FCC has twice as many attorneys as engineers. You'll want at least one of each
 - Your attorney and engineering consultant should be specifically experienced in FCC broadcast applications
 - Very few things are “fixable” after filing
 - Make sure the board is everything you say it is
 - Get a written and hand-signed “Reasonable Assurance” letter for the tower site
 - In Salem, Oregon, 80ish the tower owner who gave us Reasonable Assurance signed an affidavit on behalf of a competing applicant saying that he didn't give it. We produced the letter signed by him 2 years earlier, and the matter was settled. He had forgotten.
 - Assume that you'll be challenged on everything by a nasty, aggressive, & conniving competitor. The application needs to be bulletproof



Learn More
in the
FUTURE

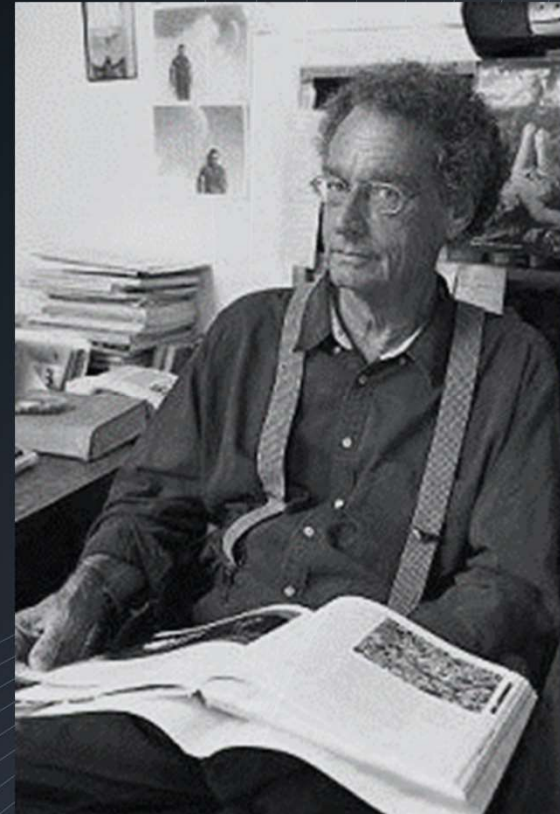
Learn More

- There are, or will soon be, several summaries and guides from Michael Couzens, Rec-Net, CMAP, Prometheus Radio Project, Common Frequency, and others
- Michael Couzens has produced the definitive guide: [New Pointers on the Point System](#)
- A synopsis from CommLawBlog (Fletcher, Heald & Hildreth):
<https://www.commlawblog.com/2019/12/articles/broadcast/picking-nce-and-lpfm-winners-simplified-nce-and-lpfm-station-transfer-rules-relaxed/>
- The full Report and Order with the latest Rule changes for Full-Power NCE and LPFM, is at <https://docs.fcc.gov/public/attachments/FCC-19-127A1.pdf>
- NCE Point System: FCC Rules §73.7003
- LPFM Point System: FCC Rules §73.872

**(Broadcasting is) “...a
disease. A need as strong and
vibrant as the need to love, to
eat, and to sleep.**

Lorenzo Milam

from *Sex and Broadcasting*



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