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# **Broadcasters' Desktop Resource**

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## **Focus on Regulation**

### **FM Upgrade Opportunities: Can They Help Your Station?**

*By Laura Mizrahi*



*[April 2010] The FCC usually provides opportunities to file for new FM stations by opening “windows” for applications from time to time. During the windows, applications for commercial allocations lead to auctions, while NCE-FM applications are evaluated under a point system to award Construction Permits. At present, there are no upcoming filing windows for new or major change applications on the horizon but this does not mean that there may not be opportunities for stations to upgrade facilities. Laura Mizrahi explains:*

Fortunately, it does not take a window for existing NCE stations to take advantage of the elimination of the prior TV Channel 6 protection requirements to possibly effectuate a previously unallowable power increase or site change. There are also options to be explored by grandfathered Class A facilities, as well as new possibilities for LPFM's.

Given the infrequent opening of windows for new NCE stations, and the overall scarcity of available spectrum, we are frequently asked if there are any viable current filing opportunities. The answer to this question is dependent upon your station's specific allocation situation, whether non-commercial or commercial, full service or LPFM, or are licensed as a grandfathered Class A or Class D facility. Before delving into some of these possibilities, below is a brief review of how the process works under a filing window scenario.

#### **HOW THE FM COMMERCIAL PROCESS WORKS**

The FCC advertises what allocations are available. Applicants are invited to sign up for the auction that will be held, (and deposit a down-payment with the FCC).

The bidding is handled in a series of “rounds,” with each participant allowed to increase their bid until there are no more bid advances for that particular allocation. The applicant is then expected to complete the transaction by paying the remaining amount due according to the published payment schedule deadline.

Applicants that do not currently own a station or have only three or less facilities - and meet certain criteria - are given a 25 to 35% credit off the high bid, so they can save some money.

## **THE NCE-FM DIFFERENCE**

In the best of all possible worlds for an applicant, they would be the only application for a particular allotment. The CP is then issued to them. It almost seems too easy, right? That is because when more than one application is filed for the same allocation, things get complex in a hurry.

When multiple, mutually exclusive (MX) applications are filed for an NCE-FM allocation, the “first or second service analysis” (essentially a 307(b) fair distribution of service determination) takes into account all currently licensed or CP facilities whose 60 dBu contours cover all, or a portion of, each of the MX applications’ proposed 60 dBu contours. This analysis will ascertain whether there is any white (first service) or gray (second service) area that will be served by a new facility and which, if any, of the new proposals would serve the greatest of these areas in terms of percentage of area and population.

At this point you should determine how you and your application stack up under the “Point System Factors” which is ultimately used by the Commission to evaluate mutually exclusive applications for the same allotment when there is no clear winner under 307(b). These factors include (but are not limited to) the number of existing and pending authorizations you hold or whether you are a local applicant or part of a statewide network. Recently additional preferences were added for Native American entities. Each of the factors is associated with points added or subtracted to an applicant’s total.

Ultimately, after evaluation of the technical proposal, the FCC uses the point total to choose a tentative CP selectee in these mutually exclusive situations. Finally, an LPFM licensee must pledge to divest itself of such an authorization prior to grant of a successfully filed application.

## **WHAT CAN EXISTING STATIONS DO NOW?**

With the recent DTV transition, the prior TV Channel 6 protection requirements that have previously hamstrung many full service NCE stations are no longer an issue. For a number of these facilities this may permit a previously non-viable power increase or site change.

An example of just such an upgrade is a recent CP granted to KCSS, Turlock, CA, based on engineering undertaken by CTI, increasing the ERP of the station from the prior 400 Watt vertical only to 6,000 Watt circular polarization, resulting in an increase of nearly 150% of population within the station’s protected 60 dBu coverage contour.

In addition to a power increase or site change, an adjacent (minor) channel change can also be explored for possible additional improvement potential.

## **FUTURE NEW STATION OPPORTUNITIES**

With respect to LPFM, it is anticipated that a window will be opened later this year for new stations and major change applications for this service.

In this regard, the LPFM Rules have already been relaxed to an extent that there may be viable site change options for existing facilities. Additional Rule modifications, including the elimination of both second and third adjacent protection requirements to full service facilities, are expected in conjunction with the upcoming window. So, the time is near when interested parties will want to have a study, or studies, conducted for possible new opportunities for this service.

Lastly, there are still a number of grandfathered Class A, 3 kW facilities (regulated under Section 73.213) that may be able to take advantage of a mutual upgrade with another involved 73.213 station if such a mutual upgrade can be determined to be “in the Public Interest.” These allocation studies are typically fairly complicated, involving a number of variables, but if engineered carefully can afford these stations a worthwhile upgrade from both an FCC theoretical and real world coverage standpoint.

As always, your consultant and FCC attorney are your most important tools in the consideration of all of these potential issues.

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