

# Summary of Eligibility Requirements and Application Procedure for New FCC Low Power Radio Licenses

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On January 20, 2000, the Federal Communications Commission ("FCC") adopted an order that created a new low power radio service. This summary contains a brief overview of the eligibility and application procedures in that order. Specific operating rules also will apply to organizations that become low power broadcasters. These rules must be followed, and will be covered in succeeding summaries. (Specific questions about how the FCC's decision applies to you should be addressed to an experienced telecommunications attorney or member of the FCC staff. This summary does not constitute legal advice and is prepared for the convenience of the public.)

In order to transmit a radio broadcast over the air, members of the public must obtain a license from the FCC. The FCC issues licenses based on a number of criteria, including the power -- or electric wattage -- of the broadcast signal. It is illegal to broadcast without a license. An organization that has a license from the FCC is called a "licensee" and must comply with the FCC's rules. If a licensee violates the FCC's rules, it may have to pay fines or may lose its license. Broadcast licenses last 8 years, and most broadcasters can expect to receive renewal, except in the case of egregious violations of the FCC's rules.

## Two classes of low power radio service.

The FCC adopted two new classes of service. LP100 stations must be between 50 watts and 100 watts. LP100 service will reach approximately a 7 mile diameter. LP10 stations will be between 1 watt and 10 watts, and will reach a diameter of about 2 to 4 miles.<sup>1</sup> The low power service will be noncommercial, but stations may be located anywhere on the FM band, not just on the lower portion where virtually all noncommercial stations are now.

## Who is eligible for a low power license?

*Noncommercial educational non-profit organizations.* Individuals may not obtain low power licenses. The FCC decided that the new low power service should be noncommercial. Therefore, to obtain a low power radio license, an organization must meet the legal requirements for "noncommercial educational" licensees. A licensee may be a governmental or private educational institution, such as a public school or university or a private school.

In addition, a low power licensee may be a private, not-for-profit organization with an educational purpose. The FCC does not require a licensee to obtain tax-exempt status from the IRS (known as 501(c)(3) status), but obtaining that status may assist an organization in demonstrating that it is a non-

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<sup>1</sup> The distance a station will be able to reach is dependent upon both the power of the signal (wattage) and the height of the antenna. The FCC will allow low power broadcasters to vary the wattage and the height, but in no event may a signal reach farther than the authorized wattage and an antenna of 30 meters HAAT. HAAT is a technical term that stands for "Height Above Average Terrain," this is a special technical measure of height that does not always equal a standard measurement. The FCC intends to release software for the public's use to assist low power applicants in measuring HAAT.

profit to the FCC, and, it may assist the organization in other ways. (For example, the organization will not have to pay federal taxes and some foundations or lenders will not give money to an organization that does not have 501(c)(3) status.)

The definition of "educational purpose" is very broad. An organization's purpose may be to educate the public about virtually any issue. For example, an acceptable purpose might be: to educate the Jonesville community about current political issues, or to educate the migrant worker community about issues important to it. A licensee must show how the programming it will air will further its educational objective.

*No control by full power licensees.* An organization that has a full power license (such as a current broadcaster) cannot receive a low power license. Someone who works for or manages a full-power radio station may not be on the board of directors or otherwise control an organization with a low power license. This does not mean that a low power organization may not obtain help and advice from full-power broadcasters, but it does mean that a person involved in full-power broadcasting should not be able to directly control what the low power radio station does. Applicants should be careful when they organize their non-profits and assign responsibility and authority to act to certain individuals, it may be very important to seek advice from an attorney.

*The low power licensee must be local.* In order to apply within the first two years of the service, an organization must either have its headquarters or campus within 10 miles of the low power radio station's antenna, or, 75 percent of its board members must live within 10 miles of the station's antenna. (Public safety organizations must be located in the same jurisdiction that authorized them, thus a state public safety entity may be located anywhere in that state.) After two years, low power licensees don't have to be local, but license applicants that are local will be preferred over applicants that aren't (see below).

*No ownership of two stations at first, and no ownership of two stations that overlap.* For the first two years of the service, no organization may have two low power licenses. (During the third year, the FCC will

## **Application Procedures**

*Application dates/deadlines.* The FCC has not yet announced the application dates. The FCC has stated it hopes applications will be filed in May, 2000. Applications will be accepted only during a "window" that lasts for five days. Applicants cannot apply before or after the window. The FCC will announce the window dates at least 30 days before it occurs. The best way to learn when the FCC announces the dates will be to check the FCC's web site at <http://www.fcc.gov/mmb/lpfm>. The first window will be for LP100 stations only, LP10 stations will be available in the second window.

*Application Form.* The FCC is working on an electronic application form that would be available on the FCC's web site. This form will not be mandatory, and might not be available for the first application window. The electronic form will be preferable because it will be designed to assist applicants in discovering whether they have made an error completing the application. The application form will consist of two parts -- a seven-page series of yes/no questions and information blanks, and worksheets that will help applicants answer the questions correctly. If applicants do not use an electronic form, they can use a paper form and mail it into the FCC.

*Determining where licenses are available.* Applicants will have to submit an application for a specific open location. This means applicants must select both the frequency (the number on the dial) and the physical location for an antenna. Not all frequencies or geographic locations are available. Because of spectrum congestion, for example, there may be several locations in the south side of a city, but none on the east side. Some cities, like New York City, do not have any low power licenses available. The FCC will issue charts that will estimate the number of stations in many large cities. In addition, available frequency changes with every modification by current full-power broadcasters. Applicants should update any information they receive on available frequencies before they apply.

The FCC is developing software for its web site that will help applicants determine where licenses are available. It does not yet know when this software will be available, although the FCC plans to have it available at least 30 days before the filing window. In addition, although the software will be as user-friendly as possible, some broadcast engineering knowledge may be necessary to use it. Applicants do not have to wait for the FCC's software. Broadcast engineers can also analyze a specific city using the information available in the FCC's order and on its web site to determine where frequencies are available. You may want to seek volunteer assistance or pay a broadcast engineering firm to determine which licenses are available in your area.

## **Granting Licensees**

Once an application is filed, the FCC must decide whether it can grant a license. (Applications that are incorrect technically or for other reasons will not be granted.) There are two parts to this process.

*Petitions to Deny.* First, the FCC must give members of the public a chance to challenge a licensee (this is called a "Petition to Deny"). Once an applicant is tentatively picked to receive a license, the FCC makes a special announcement that gives members of the public the chance to argue that the proposed licensee is, for example, lying about its application. If, after 30 days, no one comes forward, then the FCC is free to grant the license.

*Not enough licenses.* The second part of granting licenses is more complicated. If there are not enough licenses for all the applicants, the FCC must pick among the applicants. The FCC will first identify which applications conflict with each other -- these are called mutually exclusive applications. The FCC will

give each applicants points (described below) to determine who should receive the license. The FCC will announce the list of mutually exclusive applicants, and their point totals, including tied applicants. Applicants can cooperate with each other to remove the conflicts in two ways. First, if *all* the mutually exclusive applicants agree, virtually any proposal to allocate the licenses can be submitted to the FCC. Second, any number of tied applicants can pool their points if they agree to a time-sharing proposal that grants at least 10 hours per week to each applicant. Applicants will have 30 days, measured from the day the FCC makes the announcement, to submit their written time-sharing agreement to the FCC. The FCC will put the announcement on its web site. It may or may not give applicants individual notice.

*Point system for preferred characteristics.* The FCC will evaluate applicants according to three criteria -- they will assign points for these criteria, the applicant with the most points will receive the license. Applicants will receive one point for each of the following three criteria: (1) "established community presence" -- the applicant must certify that it met the FCC's "local" criteria for the last two years (headquarters, campus, or 75% of board within 10 miles of the proposed antenna); (2) the applicant pledges to operate at least 12 hours per day; (3) the applicant pledges it will broadcast at least 8 hours per day of programming that was produced within 10 miles of the antenna.

*Strategy in case of many applicants and point ties.* The FCC will allow applicants that tie to pool their points together. This means if you think you and another organization will want to work together, it is important for each applicant to apply separately first to the FCC, and then submit a time-sharing agreement later. Since applicants will only have 30 days to submit an agreement, however, this means groups should work to establish sharing agreements in advance.

*Last resort tie-breaker.* If applicants are tied and there are eight or fewer applicants, the FCC will divide the eight-year license term into equal parts, and give each applicant one of the parts. After 8 years, the license will again be available to the public. If there are more than eight applicants, the FCC will divide the license term among the eight applicants with the longest "established community presence," as defined above.

## **Rules that Apply After a License is Granted**

*Constructing the antenna.* Once the FCC decides an applicant will get a license, the applicant must build its antenna and facilities within 18 months. Until the applicant finishes building the antenna, the applicant will have a "construction permit." Once the antenna is finished, the applicant notifies the FCC and can obtain the license and begin broadcasting.

*Other obligations.* All noncommercial stations must be on the air 36 hours per week, at least 5 hours each day for 6 days -- but educational institutions are not required to operate on Saturday or Sunday. The licenses cannot be transferred to another entity, they must be returned to the FCC. Low power licensees must purchase emergency alert system decoder equipment and transmit notices to the public.

FCC broadcast licensees have many additional obligations, too lengthy to elaborate here. These obligations include, for example, specific rules prohibiting obscenity, governing treatment of political candidates, and disallowing broadcast of hoaxes. These obligations will be the subject of future summaries.

**Media Access Project ("MAP") is a non-profit, public interest law firm that represents the public before the Federal Communications Commission and in the courts. MAP is providing legal support to the National Microradio Implementation Project of the UCC Office of Communication, Inc., among others. MAP's web site is**

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