

Educational, Noncommercial FM Station, Frequencies

Sec. 1.573 amended by adding note 3, which imposes a freeze on 10-watt (Class D) noncommercial educational FM broadcast stations. See also FCC 78-385, Further Notice of Proposed Rulemaking re changes in noncommercial educational FM b/c stations. (DO 20735)

F.C.C. 78-386

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

In the Matter of

CHANGES IN THE RULES RELATING TO
 NONCOMMERCIAL EDUCATIONAL FM
 BROADCAST STATIONS

Docket No. 20735
 RM-1974
 RM-2655

FIRST REPORT AND ORDER

(Adopted: June 7, 1978; Released: June 12, 1978)

BY THE COMMISSION:

1. As discussed at length in the *Notice of Proposed Rulemaking* in this proceeding, the Commission has under consideration a large number of issues relating to improving the efficiency of the use of the FM channels reserved for noncommercial educational purposes.¹

2. Among the main issues the Commission is exploring is the treatment to be given to Class D (10-watt) stations. It has been argued that such low power operations represent a highly inefficient use of the limited spectrum space available for educational FM. The Commission agreed that this was an area of concern and it proposed steps to respond to any problems in this area.

3. At the time the *Notice* was issued, we stated "We do not believe that a 'freeze' on 10-watt operations is required or that action on pending applications would have to be withheld." However, we also added "if we learn otherwise, we are prepared to take either step promptly."² It has become clear that a "freeze" is required. In a *Second Report and Order* we have adopted a series of rule changes affecting 10-watt stations. In essence, we are requiring them to change channel wherever possible. They would move to a commercial channel if possible, if not to newly created FM Channel 200 or if not to the best educational channel. Through this process, which is to begin in 1980, we hope to bring significant improvements in efficiency of channel use. If this process is to be administered in a fair and orderly manner, we

¹ In the 48 contiguous states, FM Channels 201-220 are set aside for noncommercial educational use.

² In our view this statement provides adequate notice that a rule embodying a "freeze" might be adopted. Moreover, as concluded by the Commission in like situations, since such a "freeze" is a matter of Commission practice and procedure, prior notice is not required before such a rule could be adopted. See 5 U.S.C. § 553(b)(3)(A). See also, e.g., *AM Freeze*, 44 F.C.C. 2927 (1962).

cannot accept further applications of this sort.³ Accepting new applications could only disrupt the process and adversely affect the rights of existing stations.

4. Accordingly, we shall amend the applicable processing rule (Section 1.573) to impose a "freeze" to take effect upon its publication in the Federal Register. No application tendered after that date will be accepted for filing. Ordinarily, a rule change such as this would not become effective until 30 days from its publication in the Federal Register. However, rather than wait this long, we believe it is necessary to make it effective earlier to avoid the danger that there otherwise would be a large flow of applications occasioned solely by a "freeze".⁴

5. Because the "freeze" will take effect without delay, we believe we can process all applications now on file and those to be filed before the "freeze" takes effect under the present rules. Then, as with other existing stations, they will be required to propose a change in channel in connection with their application for renewal of license.

6. Accordingly, IT IS ORDERED, effective, 1978, That Section 1.573 of the Commission's Rules IS AMENDED by adding Note 3 which reads as follows:

Section 1.573 Processing of FM and noncommercial educational FM applications.

NOTE 3: Processing of applications for new low power educational FM stations.

Pending the Commission's restudy of the impact of the rule changes pertaining to the allocations of 10-watt and other low power educational FM stations applications for such new stations or major changes in existing ones will be considered as set forth below, notwithstanding any provision of this chapter to the contrary, and will be accepted for filing only if they specify facilities of at least 100 watts effective radiated power.

7. Authority for this action is found in Sections 4(i), 303(g) and (r) and 309(g) of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO, *Secretary*.

³We believe it is necessary to include within the "freeze" all applications not specifying at least minimum Class A facilities, that is an effective radiated power of at least 100 watts. Even though not all of the affected applications are Class D proposals, we believe that all such applications raise a question of efficiency and thus, need to be included in the "freeze".

⁴We believe that these facts provide good cause within the terms of 5 U.S.C. § 553(d)(3) for ordering such an early effective date.

NOTE: Rules changes herein will be covered by T.S. I(77)-3.