

Federal Communications Commission

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[66 FR 21690, May 1, 2001]

Subpart K—Application and Selection Procedures for Reserved Noncommercial Educational Channels, and for Certain Applications for Non-commercial Educational Stations on Non-Reserved Channels

SOURCE: 65 FR 36380, June 8, 2000, unless otherwise noted.

§ 73.7000 Definition of terms (as used in subpart K only).

Attributable interest. An interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to § 73.3555. Also an interest of an entity providing more than 33 percent of an applicant's equity and/or debt that also either (1) supplies more than 15% of the station's weekly programming, or (2) has an attributable interest pursuant to § 73.3555 in media in the same market.

Established local applicant. An applicant that has, for at least the two years (24 months) immediately preceding application, met the definition of local applicant.

Local applicant. An applicant physically headquartered, having a campus, or having 75% of board members residing within 25 miles of the reference coordinates for the community to be served, or a governmental entity within its area of jurisdiction.

Nonreserved (Unreserved) channels. Channels which are not reserved exclusively for noncommercial educational use, and for which commercial entities could thus be eligible to operate full power stations. Such channels appear without an asterisk designation in the

FM Table of Allotments (§ 73.202) and TV Table of Allotments (§ 73.606). In the event of a request to allocate a non-reserved channel as reserved pursuant to §§ 73.202(a) or 73.606(a), the channel remains classified as nonreserved until release of a Commission decision granting such request.

On-air operations. Broadcast of program material to the public pursuant to Commission authority, generally beginning with program test authority, for periods of time that meet any required minimum operating schedule, e.g. § 73.561(a).

Population. The number of people calculated using the most recent census block data provided by the United States Census Bureau.

Reserved channels. Channels reserved exclusively for noncommercial educational use, whether by the portion of the spectrum in which they are located (i.e. FM channels 200 to 220) or by a case-by-case Commission allotment decision (channels that appear with an asterisk designation in the FM Table of Allotments (§ 73.202) or TV Table of Allotments (§ 73.606)).

[65 FR 36380, June 8, 2000, as amended at 66 FR 15356, Mar. 19, 2001]

§ 73.7001 Services subject to evaluation by point system.

(a) A point system will be used to evaluate mutually exclusive applications for new radio, television, and FM translator facilities, and for major changes to existing facilities, on reserved channels.

(b) A point system will be used to evaluate mutually exclusive applications for new radio, television, and FM translator facilities, and for major changes to existing facilities, on non-reserved channels, only when all of the mutually exclusive applications are for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6)(A) or 47 U.S.C. 397(6)(B).

(c) A point system will be used to evaluate mutually exclusive applications for new television translator and low power television facilities, and for major changes to existing facilities, only when all of the mutually exclusive applications are for noncommercial

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educational broadcast stations, as described in 47 U.S.C. 397(6)(B).

[65 FR 36380, June 8, 2000, as amended at 68 FR 26229, May 15, 2003]

§ 73.7002 Fair distribution of service on reserved band FM channels.

(a) If timely filed applications for full service stations on reserved FM channels are determined to be mutually exclusive, and will serve different communities, the Commission will first determine, as a threshold issue, whether grant of a particular application would substantially further the fair distribution of service goals enunciated in section 307(b) of the Communications Act, 47 U.S.C. 307(b).

(b) In an analysis performed pursuant to paragraph (a) of this section, a full service FM applicant that will provide the first or second reserved channel noncommercial educational (NCE) aural signal received by at least 10% of the population within the station's 60dBu (1mV/m) service contours will be considered to substantially further fair distribution of service goals and to be superior to mutually exclusive applicants not proposing that level of service, provided that such service to fewer than 2,000 people will be considered insignificant. First service to 2,000 or more people will be considered superior to second service to a population of any size. If only one applicant will provide such first or second service, that applicant will be selected as a threshold matter. If more than one applicant will provide an equivalent level (first or second) of NCE aural service, the size of the population to receive such service from the mutually exclusive applicants will be compared. The applicant providing the most people with the highest level of service will be awarded a construction permit, if it will provide such service to 5,000 or more people than the next best applicant. If none of the applicants in a mutually exclusive group would substantially further fair distribution goals, all applicants will proceed to examination under a point system. If two or more applicants will provide the same level of service to an equivalent number of people (differing by less than 5,000), only those equivalent applicants

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will be considered together in a point system.

(c) For a period of four years of on-air operations, an applicant receiving a decisive preference pursuant to this section is required to construct and operate technical facilities substantially as proposed and shall not downgrade service to the area on which the preference was based.

[65 FR 36380, June 8, 2000, as amended at 66 FR 15356, Mar. 19, 2001]

§ 73.7003 Point system selection procedures.

(a) If timely filed applications for reserved FM channels or reserved TV channels are determined to be mutually exclusive, applications will be processed and assessed points to determine the tentative selectee for the particular channels. The tentative selectee will be the applicant with the highest point total under the procedure set forth in this section, and will be awarded the requested permit if the Commission determines that an award will serve the public interest, convenience, and necessity.

(b) Based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed:

(1) *Established local applicant.* Three points for local applicants as defined in § 73.7000 who have been local continuously for no fewer than the two years (24 months) immediately prior to application, if the applicant's own governing documents (e.g. by-laws, constitution, or their equivalent) require that such localism be maintained.

(2) *Local diversity of ownership.* Two points for applicants with no attributable interests as defined in § 73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station, if the applicant's own governing documents (e.g. by-laws, constitution, or their equivalent) require that such diversity be maintained. The principal community (city grade) contour is the 5 mV/m for AM stations, the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c), and the contour identified in