

area; a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation; geographical proximity of the area to the reservation and administrative feasibility of providing an adequate level of services to the area.

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.

Reservations. Any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688) and Indian allotments, for which a Tribe exercises regulatory jurisdiction.

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)).

Tribe. Any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a

government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians. See *The Federally Recognized Indian Tribe List Act of 1994* (Indian Tribe Act), Public Law 103-454, 108 Stat. 4791 (1994) (the Secretary of the Interior is required to publish in the FEDERAL REGISTER an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

Tribal applicant. (1) A Tribe or consortium of Tribes, or

(2) An entity that is 51 percent or more owned or controlled by a Tribe or Tribes that occupy Tribal Lands that receive Tribal Coverage.

Tribal coverage. Coverage of Tribal Lands by at least 50 percent of a facility's 60 dBu (1 mV/m) contour. To the extent that Tribal Lands include fee lands not owned by Tribes or members of Tribes, the outer boundaries of such lands shall delineate the coverage area, with no deduction of area for fee lands not owned by Tribes or members of Tribes.

Tribal lands. Both Reservations and Near reservation lands. This definition includes American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, Hawaiian Homelands, and Alaska Native Village Statistical Areas, as well as the communities situated on such lands.

[65 FR 36380, June 8, 2000, as amended at 66 FR 15356, Mar. 19, 2001; 75 FR 9807, Mar. 4, 2010]

§ 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

§ 73.7002

47 CFR Ch. I (10–1–10 Edition)

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 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 identifies itself as a Tribal Applicant, that proposes Tribal Coverage, and that proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands, will be awarded a construction permit. If two or more full-service FM applicants identify themselves as Tribal Applicants and meet the above criteria, the applicant providing the most people with reserved channel NCE service to Tribal Lands will be awarded a construction permit, regardless of the magnitude of the superior service or the populations of the communities of license proposed, if different. If two or more full-service FM applicants identifying themselves as Tribal Applicants each meet the above criteria and propose identical levels of NCE aural service to Tribal Lands, only those applicants shall proceed to be considered together in a point system analysis. In an analysis performed pursuant to paragraph (a) of this section that does not include a Tribal Applicant, a full service FM applicant that will provide the first or second re-

served 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 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. Additionally, for a period beginning from the award of a construction permit through four years of on-air operations, a Tribal Applicant receiving a decisive preference pursuant to this section may not:

(1) Assign or transfer the authorization except to another party that qualifies as a Tribal Applicant;

(2) Change the facility's community of license; or