

(iv) No entity may claim both the diversity credit and the state-wide network credit in any particular application.

(4) *Technical parameters.* One point to the applicant covering the largest geographic area and population with its relevant contour (60 dBu for FM and Grade B for TV), provided that the applicant covers both a ten percent greater area and a ten percent greater population than the applicant with the next best technical proposal. The top applicant will receive two points instead of one point if its technical proposal covers both a 25 percent greater area and 25 percent greater population than the next best technical proposal.)

(c) If the best qualified (highest scoring) two or more applicants have the same point accumulation, the tentative selectee will be determined by a tie-breaker mechanism as follows:

(1) Each applicant's number of attributable existing authorizations (licenses and construction permits, commercial and noncommercial) in the same service (radio or television) nationally, as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee. Radio applicants will count commercial and non-commercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

(2) If a tie remains after the tie breaker in paragraph (c)(1) of this section, the tentative selectee will be the remaining applicant with the fewest pending new and major change applications in the same service at the time of filing;

(3) If a tie remains after the tie breaker in paragraph (c)(2) of this section, each of the remaining applicants will be identified as a tentative selectee, with the time divided equally among them.

(d) *Settlements.* At any time during this process, the applicants may advise the Commission that they are negotiating or have reached settlement, and the Commission will withhold further comparative processing for a reasonable period upon such notification. Settlement may include an agreement to share time on the channel voluntarily

or other arrangement in compliance with Commission rules. Parties to a settlement shall comply with § 73.3525, limiting any monetary payment to the applicant's reasonable and prudent expenses.

(e) For applications filed after April 21, 2000, an applicant's maximum qualifications are established at the time of application and will be reduced for any post-application changes that negatively affect any evaluation criterion.

(f) For applications filed on or before April 21, 2000, an applicant's maximum qualifications are established as of the relevant date listed in paragraph (f)(1), (2), or (3) of this section. After the relevant date for determining an applicant's maximum points, points will be reduced for any changes that negatively affect any evaluation criterion. Applicants will establish their qualifications according to the following:

(1) If the applicant is in a group for which a "B" cut-off notice issued prior to April 21, 2000 its maximum non-technical qualifications are established as of the date by which applicants must supplement their applications to supply point information, and its maximum technical qualifications are established as of the date of the "B" cut-off notice;

(2) If the applicant is in a group for which an "A" cut-off notice issued prior to April 21, 2000 but for which no "B" cut-off notice issued, its maximum non-technical qualifications are established as of the date by which applicants must supplement their applications to supply point information, and its maximum technical qualifications are established as of April 21, 2000;

(3) If the applicant was neither placed on an "A" cut-off list prior to April 21, 2000 nor filed in response to such an "A" cut-off list, it is subject to competition from applications filed within the first filing window, and its maximum technical and non-technical qualifications will be determined as of the close of the first filing window.

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

**§ 73.7004 Petitions to deny tentative selectee(s).**

(a) For mutually exclusive applicants subject to the selection procedures in

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subpart K of this part, Petitions to Deny will be accepted only against the tentative selectee(s).

(b) Within thirty (30) days following the issuance of a public notice announcing the tentative selection of an applicant through fair distribution (§ 73.7002) or point system (§ 73.7003) procedures, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The time for filing such oppositions shall be 10 days from the filing date for petitions to deny, and the time for filing replies shall be 5 days from the filing date for oppositions.

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, the application will be granted. If the Commission determines that the points originally claimed were higher than permitted, but that there is no substantial and material question of fact of applicant qualifications, it will compare the revised point tally of the tentative selectee to the other mutually exclusive applicants and, either grant the original application or announce a new tentative selectee, as appropriate. If an applicant is found unqualified, the application shall be denied, and the applicant(s) with the next highest point tally named as the new tentative selectee.

### § 73.7005 Holding period.

(a) *Assignments/Transfers.* NCE stations awarded by use of the point system in § 73.7003 shall be subject to a holding period. From the grant of the construction permit and continuing until the facility has achieved four years of on-air operations, an applicant proposing to assign or transfer the construction permit/license to another party will be required to demonstrate the following two factors: that the proposed buyer would qualify for the same number of or greater points as the as-

signor or transferor originally received; and that consideration received and/or promised does not exceed the assignor's or transferor's legitimate and prudent expenses. For purposes of this section, legitimate and prudent expenses are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (e.g. expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, etc.). Costs incurred in operating the station are not recoverable (e.g., rent, salaries, utilities, music licensing fees, etc.). Any successive applicants proposing to assign or transfer the construction permit/license prior to the end of the aforementioned holding period will be required to make the same demonstrations.

(b) *Technical.* In accordance with the provisions of § 73.7002, an NCE applicant receiving a decisive preference for fair distribution of service is required to construct and operate technical facilities substantially as proposed, and can not downgrade service to the area on which the preference is based for a period of four years of on-air operations.

(c) The holding period in this section does not apply to construction permits that are awarded on a non-comparative basis, such as those awarded to non-mutually exclusive applicants or through settlement.

## Subpart L—Incorporated Standards

SOURCE: 76 FR 62642, Oct. 11, 2011, unless otherwise noted.

### § 73.8000 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for inspection at the Federal Communications Commission (FCC),