to Commission authority, generally begin-
ning with program test authority,
for periods of time that meet any re-
quired minimum operating schedule,
e.g., §73.561(a).

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

Reservations. Any federally recog-
nized Indian tribe’s reservation, pueblo
or colony, including former reserv-
tions in Oklahoma, Alaska Native re-
geons established pursuant to the Alas-
ka Native Claims Settlements Act (85
Stat. 688) and Indian allotments, for
which a Tribe exercises regulatory ju-
risdiction.

Reserved channels. Channels reserved
exclusively for noncommercial edu-
cational 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 de-
cision (channels that appear with an
asterisk designation in the FM Table of
Allotments (§73.202) or TV Table of Al-
lotments (§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 relation-
ship with the United States and eligi-
ble for the programs and services estab-
lished by the United States for Indians.
See The Federally Recognized Indian
Tribe List Act of 1994 (Indian Tribe Act),
(the Secretary of the Interior is re-
quired to publish in the FEDERAL REG-
ISTER 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 sta-
tus as Indians).

Tribal applicant. (1) A Tribe or consor-
tium 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. (1) Coverage of a
Tribal Applicant’s or Tribal Applic-
ants’ Tribal Lands by at least 50 per-
cent of a facility’s 60 dBu (1 mV/m)
contour, or
(2) The facility’s 60 dBu (1 mV/m)
contour—
(i) Covers 50 percent or more of a
Tribal Applicant’s or Tribal Appli-
cants’ Tribal Lands,
(ii) Serves at least 2,000 people living
on Tribal Lands, and
(iii) The total population on Tribal
Lands residing within the station’s
service contour constitutes at least 50
percent of the total covered popu-
lation. In neither paragraphs (1) nor (2)
of this definition may the applicant
claim the priority if the proposed prin-
cipal community contour would cover
more than 50 percent of the Tribal
Lands of a non-applicant Tribe. 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 Home-
lands, and Alaska Native Village Sta-
tistical Areas, as well as the commu-
nities 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; 76 FR 18953, Apr. 6, 2011]

§ 73.7001 Services subject to evalu-
ation by point system.

(a) A point system will be used to
evaluate mutually exclusive applica-
tions for new radio, television, and FM
translator facilities, and for major
changes to existing facilities, on re-
served channels.
(b) A point system will be used to
evaluate mutually exclusive applica-
tions 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 applica-
tions for new television translator and
low power television facilities, and for

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§ 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. If two or more 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 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 providing 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
3. Effect a technical change that would cause the facility to provide less than full Tribal Coverage.