(ii) Antenna location and height;
(iii) Type of emission;
(iv) Effective radiated power;
(v) A description of the area served and the operator's name.

(2) It is the CMRS operator's responsibility to determine whether referral is required for stations constructed in its area of license. Public safety base stations are considered ''planned'' when public safety operators have notified, or initiated coordination with, a Commission-approved public safety coordinator.

(b) CMRS operators must wait at least 10 business days after submission of the required description before commencing operations on the referenced facility, or implementing modifications to an existing facility.

(c) The potential for harmful interference between the CMRS and public safety facilities will be evaluated by the public safety coordinator.

(1) With regard to existing public safety facilities, the coordinator's determination to disapprove a proposed CMRS facility (or modification) to be located within 500 meters of the public safety facilities will be presumed correct, but the CMRS operator may seek Commission review of such determinations. Pending Commission review, the CMRS operator will not activate the facility or implement proposed modifications.

(2) With regard to proposed public safety facilities, the coordinator's determination to disapprove a proposed CMRS facility (or modification) to be located within 500 meters of the public safety facilities will be presumed correct, but the CMRS operator may seek Commission review and, pending completion of review, operate the facility during construction of the public safety facilities. If coordination or Commission review has not been completed when the public safety facilities are ready to operate, the CMRS operator must cease operations pending completion of coordination or Commission review. Such interim operation of the CMRS facility within the coordination zone (or implementation of modifications) will not be relied on by the Commission in its subsequent review and determination of measures necessary to control interference, including relocation or modification of the CMRS facility.

(d) If, in the event of harmful interference between facilities located within 500 meters proximity, the parties are unable, with the involvement of the coordinator, to resolve the problem by mutually satisfactory arrangements, the Commission may impose restrictions on the operations of any of the parties involved.

[FR Doc. 02–19179 Filed 7–29–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 02–192]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petitions for further reconsideration.

SUMMARY: In this document the Commission denies petitions for further reconsideration of the rules and procedures used to compare reserved channel noncommercial educational (''NCE'') broadcast applicants. The Commission rejects suggestions that it adopt relatively small alterations to, or exemptions from, the current standards, finding that such changes are unwarranted. The effect of this document is to affirm the standards for comparing mutually exclusive NCE applicants on reserved channels.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Media Bureau, (202) 418–2700, Internet address: *ibleiwei@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of a Memorandum Opinion and Second Order on Reconsideration adopted on June 27, 2002 and released on July 5, 2002. The Memorandum Opinion and Second Order is also available during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Washington, DC 20554, Room CY–B402. It also appears on the internet at www.fcc.gov/mb in the headlines section.

Synopsis

In February 2000 and April 2001 the Commission adopted new procedures for comparing mutually exclusive applications to construct noncommercial educational broadcast stations on channels reserved for such use. For FM and FM translator applications the procedures begin with a preliminary analysis of fair distribution of service (FM) or fill-in service (FM translator). If the preliminary analysis is not determinative, the applicants are compared using a point system, which selects the applicant receiving the highest score. The point system also is used to compare applicants for noncommercial educational television stations. The reserved channel selection rules are published at 47 CFR 73.7000 through 47 CFR 73.7005. The Memorandum Opinion and Second Order denies petitions for further reconsideration, leaving unchanged the reserved channel selection rules, related rules and procedures announced earlier in this proceeding. Specifically, the Commission declined to adopt a suggestion to count, in the reserved channel fair distribution of service analysis, certain longstanding NCE stations operating on nonreserved channels. Also unchanged is use of a June 4, 2001 ''look back'' date for all pending applicants in closed groups to establish their non-technical qualifications for the point system. The Commission rejected a suggestion that, without a change in the look back date, older organizations might qualify for points as ''established local applicants'' even if the organization existed only on paper. It has never been the Commission's intent to award such points to organizations engaged in virtually no activities in the community of interest. The Commission also affirmed its requirement that the organization itself, not only its governing board, must be local for two years to be considered ''established.'' Finally, the Commission declined to modify its rules concerning the applicability of attribution standards in NCE contexts.

Procedural Matters

This Memorandum Opinion and Second Order on Reconsideration promulgates no additional final rules, and we received no petitions for reconsideration of the Final Regulatory Flexibility Certification. Therefore, no additional Regulatory Flexibility Analysis is required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The previous final certification made in this proceeding remains unchanged. The actions taken in this Memorandum Opinion and Second Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19181 Filed 7–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 01–290; FCC 02–176]

Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and the Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this document, retains for five years, until October 5, 2007, the prohibition on exclusive contracts contained in section 628(c)(2)(D) of the Communications Act of 1934, as amended. Section 628(c)(2)(D) generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Under section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) would cease to be effective on October 5, 2002, ten years after its enactment through the 1992 Cable Act, unless the Commission found that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. To comply with section 628, the Commission conducted a proceeding in order to determine whether the exclusive contract prohibition should sunset. As a result of conducting its proceeding, the Commission found in this document that while the landscape of the market for the distribution of multichannel video programming changed for the better since 1992, the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

DATES: Effective August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Karen A. Kosar, Media Bureau at 202–418–1053 or via the Internet at *kkosar@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Docket No. 01–290, FCC 02–176. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, Courtyard Level, 445 12th Street, SW., Washington, DC, 20554. This document may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of the Report and Order

1. The Report and Order is issued in accordance with section 628(c)(5) of the Communications Act of 1934, as amended. Section 628(c)(2)(D), enacted through the 1992 Cable Act, generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Section 628(c)(5) directs that the prohibition on exclusive contracts contained in section 628(c)(2)(D) shall cease to be effective on October 5, 2002, ten years after its enactment, unless the Commission finds that such prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' The Commission issued a Notice of Proposed Rulemaking, 66 FR 54972, October 31, 2001, seeking comment on the possible sunset of Section 628(c)(2)(D). The Report and Order finds that the exclusivity prohibition should be retained for five years, until October 5, 2007.

2. In examining whether the exclusivity prohibition ''continues to be necessary,'' the Commission sought guidance in the concerns Congress expressed in 1992, however, the Commission's analysis places substantial weight on whether, in the absence of the exclusivity prohibition, vertically integrated programmers would currently have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and program distributors using other technologies and, if they would, whether such behavior would result in a failure to protect and preserve competition and diversity in the distribution of video programming. The Report and Order recognizes that enforcement of the exclusivity prohibition against all vertically integrated programmers may not always serve the public interest and notes that retention of the prohibition does not foreclose all exclusive arrangements between vertically integrated programmers and cable operators. The Report and Order finds that Congress explicitly recognized the existence of such programming by creating a public interest exception to the prohibition. The Report and Order acknowledges that significant changes have taken place in the multichannel video programming distribution (''MVPD'') market over the past ten years, and yet finds that vertically integrated programmers generally retain the incentive and ability to favor their cable affiliates over nonaffiliated cable operators and other competitive MVPDs to such a degree that, in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected.

3. In addressing the ability of programmers to favor their cable affiliates over other MVPDs, the Report and Order finds that access to vertically integrated programming continues to be necessary in order for competitive MVPDs to remain viable in the marketplace. In that regard, an MVPD's ability to provide service that is competitive with an incumbent cable operator is significantly harmed if denied access to ''must have'' vertically integrated programming for which there are no good substitutes. The Report and Order also finds that vertically integrated programmers retain the incentive to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected. In that regard, the Report and Order finds that cable operators today continue to dominate the MVPD marketplace and that horizontal consolidation and clustering combined with affiliation with regional programming, have contributed to cable's overall market dominance. In addition, the Report and Order determines that an economic basis for denial of access to vertically integrated programming to competitive MVPDs continues, and that such denial would harm such competitors' ability to compete for subscribers. The Report and Order further finds that a partial sunset of the exclusivity prohibition is not warranted at this time.

4. The Report and Order also finds that the scope of the exclusivity prohibition should not be narrowed to apply to particular types of programming or specified geographic