SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–151, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channels 223C1 and 265A at Douglas, and Guernsey, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14377 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 00–120]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted new methods to select among competing applications to construct noncommercial educational (NCE) broadcast stations or to make changes in existing facilities of such stations. The Commission will use a point system to select among mutually exclusive applicants on reserved channels, to streamline the current selection process and make it faster and simpler for applicants and for the Commission. The Commission will use existing auction procedures to select among mutually exclusive applications on non-reserved (''commercial'') channels, even if one or more of the applicants proposes to operate noncommercially. To facilitate the transition to new ''filing window'' procedures, the Commission implemented a freeze on the filing of new applications for reserved channel noncommercial educational broadcast stations.

DATES: Effective August 7, 2000, except for §§ 73.202, 73.3527, and 73.3572 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these sections. The filing freeze became effective April 21, 2000 (*See* FCC News Releases, April 14, 2000 at www.fcc.gov).

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, http://www.fcc.gov.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Federal Communications Commission, Mass Media Bureau, Audio Services Division, 445 12th Street, S.W., Washington, D.C. 20554 (202) 418–2780, Internet address:ibleiwei@fcc.gov (inquiries about this proceeding other than information collection) or Edward C. Springer, OMB Desk Officer, Office of Management and Budget, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, Internet address: *edward.springer@omb.eop.gov* (inquiries about information collection).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* adopted April 4, 2000, and released April 21, 2000. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. The text can be obtained over the internet by going to the FCC web site, www.fcc.gov, and following the link entitled ''FCC Adopts Comparative Standards for Noncommercial Educational Broadcast Stations, 4/27/00, under the ''headlines'' section.

Synopsis of Order

1. The Commission issued a *Notice of Proposed Rule Making* in this proceeding in 1995 [60 FR 15275 March 23, 1995] proposing to change the process used to select noncommercial educational applicants, because the existing process was cumbersome and no longer making meaningful distinctions among applicants. Subsequently, Congress addressed related issues in the Balanced Budget Act of 1997, and the Commission issued a *Further Notice of Proposed Rule Making* [63 FR 58358 October 30, 1998], seeking additional comments. After considering the comments received, the Commission now adopts new simpler filing procedures and selection methods for applications seeking to construct new noncommercial educational (NCE) FM, FM translator, and television stations and to make major changes to such existing stations.

2. Applications for new and major changes to NCE stations will be filed only within ''filing windows'' to be announced by the Commission. The Commission will study applications filed during the window for mutual exclusivity. This replaces a system in which applications were accepted at any time, and ''cut-off'' lists were issued to invite competing applications.

3. If mutually applications are received within a filing window, and for existing mutually exclusive applications that have already been ''cut off,'' the Commission will first determine as a threshold issue, whether any application should be granted or dismissed on the basis of fair distribution of service pursuant to 47 U.S.C. 307(b) (FM stations proposing service to different communities) or on the basis of translator fill-in service as compared to non-fill-in service. If mutually exclusive applicants remain after these threshold issues, the Commission will proceed to a point system.

4. Points will be awarded as follows: (a) 3 points to an established local entity (a government applying for a station within its area of jurisdiction or any applicant that for at least the two years prior to application has had one of the following within 25 miles of the reference coordinates for the community of license: its headquarters, its campus, or the primary residences of 75% of its board members); (b) 1 to 2 points to the applicant with the best technical proposal (covering the largest area and population) depending on comparison to the next best technical proposal; and either (c) 2 points to applicants with local diversity of ownership (no overlap of attributable station principal community contours); or (d) 2 points to an applicant that does not claim local diversity of ownership points, if it is a state-wide network serving 50 accredited full-time elementary/

secondary schools or 5 accredited full-time college/university campuses. Points are determined by the applicant's qualifications at the time of application, provided that the applicant must still qualify for those points at the time of point analysis. In determining points, the interests of attributable parties such as parent organizations, officers, board members, and parties with significant financial influence that also will supply substantial programming to the station will be considered.

5. To break ties, the Commission will select the applicant with the fewest authorizations (existing stations and construction permits). If that standard fails to break the tie, the Commission will select the applicant with the fewest pending applications. If these tie breakers do not result in selection of a prevailing applicant, the Commission will implement mandatory time sharing for full service applicants. For FM translator applicants only, the final tie breaker will select the first applicant to file, similar to existing translator-only rules. The Commission will permit settlements at any time under current settlement rules, which limit reimbursement to an applicant's reasonable and prudent expenses.

6. The new procedures will apply to applications already on file and applications filed in the future. The Commission will issue a Public Notice in the future providing existing applicants with information about how to supplement their applications to claim the points for which they qualify. Existing applicants may file settlements at any time.

7. Until a successful applicant selected through a point system has completed four years of on-air operations, it will be permitted to assign or transfer control of the station's license only to a party eligible to receive the same number of points, and for consideration not to exceed reasonable and prudent expenses application and construction expenses.

8. The Commission will not use the point system for channels that are available commercially (non-reserved channels), even if one or more noncommercial organizations apply for the channel. Such applications will be resolved by auction. In reaching this conclusion, the Commission conducted an in-depth analysis of conflicting directives in the enabling statute, and Commission policies concerning allocation and use of the reserved and non-reserved channels.

Final Regulatory Flexibility Analysis (FRFA)

Summary

As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Further Notice of Proposed Rulemaking for the docket in this proceeding. The Commission sought written public comments on the proposals set forth in the Notice, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order (''Order'') conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996).

Need for and Objectives of Action

The Commission previously determined that traditional hearings, the method used to select among competing applicants for new noncommercial educational broadcast construction permits, were time consuming and burdensome, and that the criteria used in those hearings were vague and difficult to apply. This Order amends the Commission's rules to establish a simpler, clearer, and more streamlined process for selecting among competing noncommercial educational applicants. Specifically, it (1) establishes a point system, a type of simplified paper hearing on channels reserved for NCE use; (2) clarifies that auctions will apply on non-reserved broadcast channels; and (3) provides additional circumstances in which an NCE entity can have a non-reserved channel allocated as reserved.

Significant Issues Raised by Public Comments in Response to the Initial Analysis

No comments were received specifically in response to the IRFA in MM Docket No. 95–31. However, one commenter, in expressing support for the use of lotteries, an option not selected, stated that it thought lotteries would have a positive effect on small businesses.

Description and Estimate of the Number of Small Entities Involved

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. S 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.[1] We received no comment in response to either IRFA on how to define radio and television broadcast ''small businesses.'' Therefore, we will continue to utilize SBA's definitions for the purpose of this FRFA.

The rules adopted in this Order will apply to television and radio stations licensed to operate on channels reserved as ''noncommercial educational.'' With respect to television stations, the Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Television stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are other establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

For 1992 the total number of television stations that produced less than $10.0 million in revenue was 1,155 of the 1,509 television stations then operating, both commercial and

[1] While we believe that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FRFA, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to these rules and to consider furher the issue of the number of small entities that are radio and television broadcasters or small media entities in the future. See Report and Order in MM Docket No. 93–48 (Children's Television Programming), 11 FCC Rcd 10660, 10737–38 (1996), citing 5 U.S.C. S 601(3).

noncommercial, or 77 percent. As of July 31, 1999, of the 1,599 total television stations, 370 are noncommercial educational. Thus, we estimate that the proposed rules will potentially affect 285 (77 percent of 370) noncommercial educational television stations that are small businesses. These existing stations would only be affected if they file an application for major modification of their existing facilities, and if another applicant files a mutually exclusive application. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. On the other hand they may understate the number of small entities, because we believe that a larger percentage of noncommercial educational stations are small businesses than the percentage applicable to the television industry as a whole. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In 1997, minorities owned and controlled 38 (3.2%) of 1,193 commercial television stations in the United States. Comparable figures are not available for noncommercial stations. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and noncommercial television stations in the United States. The proposal would also affect pending and future mutually exclusive applications for noncommercial television stations. As of August 1999, there are currently 67 pending applications for 22 channels reserved for noncommercial educational television usage.

The rule changes would also affect noncommercial educational radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Radio stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are entities which primarily are engaged in radio broadcasting and which produce radio program materials. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of July 31, 1999, official Commission records indicate that 12,582 radio stations are currently operating. Of the current radio station total, 2,055 stations are noncommercial educational. Thus, we estimate that 1,923 (96%) of these noncommercial educational stations are small businesses, possibly more because we believe that a greater percentage of noncommercial educational stations are small businesses than of the radio industry overall. These existing stations would only be affected by the proposal if they choose to file applications for major modification of facilities and if their applications are mutually exclusive with the application of another noncommercial entity. Applicants for new NCE radio stations would also potentially be affected. As of August 1999 there were 371 pending mutually exclusive groups of 1,102 applications, for new noncommercial FM radio stations. We also note that this proposal will affect future applications. With respect to minority ownership of radio stations, no information is available for noncommercial stations, but it is available for commercial stations. In 1997, minorities owned 284 (2.8%) of 10,282 commercial radio stations.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The measures adopted in the Order are anticipated to reduce the overall administrative burden of the Commission's application processes on applicants and the Commission. Use of a point system will eliminate the expense of preparing for and appearing at lengthy traditional hearings. Applicants should also receive decisions faster, because the Commission will make numerical calculations instead of preparing detailed hearing decisions. These savings should more than offset the time that would be required for applicants to gather and submit documentation supporting the points claimed. No additional professional services are required by applicants filing under these revised rules. Further, the cost of compliance will not vary between large and small entities.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

This Order sets forth the Commission's new streamlined procedures for selecting among competing noncommercial educational applicants. All significant alternatives presented in the comments were considered. Small entities participating in auctions for non-reserved channels may be eligible for a new entrant auction credit. Small entities may be eligible for points in the point system based on diversity of ownership, established local entity, and in a tie breaker for number of existing authorizations and applications.

Report to Congress

The Commission will send a copy of the Reexamination of the Comparative Standards for Noncommercial Educational Applicants, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. Further, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

Regulatory Text

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202 is amended by revising paragraph (a)(1) to read as follows:

§ 73.202 Table of Allotments.

(a) * * *

(1) Channels designated with an asterisk may be used only by noncommercial educational broadcast

stations. The rules governing the use of those channels are contained in part 73, subpart C of this chapter. An entity that would be eligible to operate a noncommercial educational broadcast station can, in conjunction with an initial petition for rulemaking filed pursuant to part 1, subpart C of this chapter, request that a nonreserved FM channel (channels 221 through 300) be allotted as reserved only for noncommercial educational broadcasting by demonstrating the following:

(i) No reserved channel can be used without causing prohibited interference to TV channel 6 stations or foreign broadcast stations; or

(ii) The applicant is technically precluded from using the reserved band by existing stations or previously filed applications and the proposed station would provide a first or second noncommercial educational radio service to 2,000 or more people who constitute 10% of the population within the proposed allocation's 60 dBu (1 mV/m) service contour.

* * * * *

§ 73.502 [Removed and reserved]

3. Section 73.502 is removed and reserved.

4. Section 73.503 is amended by adding a new paragraph (e) to read as follows:

§ 73.503 Licensing requirements and service.

* * * * *

(e) Mutually exclusive applications for noncommercial educational radio stations operating on reserved channels will be resolved pursuant to the point system in subpart K.

* * * * *

5. Section 73.513 is amended by designating the undesignated text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 73.513 Noncommercial educational FM stations operating on unreserved channels.

* * * * *

(b) When a noncommercial educational applicant is among mutually exclusive applications for an unreserved FM channel, the mutually exclusive applications will be considered pursuant to Subpart I—Competitive Bidding Procedures and not Subpart K—Application and Selection Procedures On Reserved Noncommercial Educational Channels.

6. Section 73.621 is amended by adding a new paragraph (h) to read as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(h) Mutually exclusive applications for noncommercial educational TV stations operating on reserved channels shall be resolved pursuant to the point system in subpart K.

7. Section 73.622 is amended by adding two new sentences immediately preceeding the last sentence of paragraph (a) to read as follows:

§ 73.622 Digital television table of allotments.

(a) * * * Rules governing noncommercial educational TV stations are contained in § 73.621. Where there is only one technically available channel available in a community, an entity that would be eligible to operate a noncommercial educational broadcast station may, prior to application, initiate a rulemaking proceeding requesting that an unoccupied or new channel in the community be changed or added as reserved only for noncommercial educational broadcasting upon demonstrating that the noncommercial educational proponent would provide a first or second noncommercial educational TV service to 2,000 or more people who constitute 10% of the population within the proposed allocation's noise limited contour.

* * *

* * * * *

8. Section 73.1150 is amended by adding a new paragraph (d) to read as follows:

§ 73.1150 Transferring a station.

* * * * *

(d) Authorizations awarded pursuant to the noncommercial educational point system in subpart K are subject to the holding period in § 73.7005. Applications for an assignment or transfer filed prior to the end of the holding period must demonstrate the factors enumerated therein.

9. Section 73.3522 is amended by revising paragraph (b) to read as follows:

§ 73.3522 Amendment of applications.

* * * * *

(b) *Reserved Channel FM and reserved noncommercial educational television stations.* Applications may be amended after Public Notice announcing a period for filing amendments. Amendments, when applicable, are subject to the provisions of §§ 73.3514, 73.3525, 73.3572, 73.3573, 73.3580, and § 1.65 of this chapter. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration. Amendments will be accepted as described below and otherwise will only be considered upon a showing of good cause for late filing or pursuant to § 1.65 of this chapter or § 73.3514:

(1) A § 73.7002 Selectee. A Public Notice will announce that the application of a § 73.7002 Selectee (selected based on fair distribution) has been found acceptable for filing. If any Selectee's application is determined unacceptable the application will be returned and the Selectee will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor and must not alter the § 73.7002 preference.

(2) A § 73.7003 Tentative Selectee. A Public Notice will announce that the application of a § 73.7003 Tentative Selectee (selected through a point system) has been found acceptable for filing. If any Tentative Selectee's application is determined unacceptable the application will be returned and the Tentative Selectee will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor and must claim the same number of qualitative points as originally claimed, or more points than claimed by the applicant with the next highest point total.

(3) A Public Notice will identify all other reserved channel applications, such as non-mutually exclusive applications and the sole remaining application after a settlement among mutually exclusive applications. If any such application is determined unacceptable the application will be returned and the applicant will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor.

10. Section 73.3527 is amended by revising the first sentence of paragraph (e)(2) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(2) *Applications and related materials.* A copy of any application tendered for filing with the FCC, together with all related material, including supporting documentation of any points claimed in the application

pursuant to § 73.7003, and copies of FCC decisions pertaining thereto. * * *
* * * * *

11. Section 73.3555 is amended by revising paragraph (f) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(f) The ownership limits of this section are not applicable to noncommercial educational FM and noncommercial educational TV stations. However, the attribution standards set forth in the Notes to this section are relevant to evaluation of mutually exclusive noncommercial educational FM and TV applicants pursuant to subpart K of this part.

* * * * *

12. Section 73.3572 is amended by revising paragraph (d) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster station applications.

* * * * *

(d)(1) The FCC will specify by Public Notice, a period for filing applications for new television stations on reserved noncommercial educational channels or for major modifications in the facilities of an authorized station on reserved channels. TV reserved channel applications for new facilities or for major modifications will be accepted only during the appropriate filing period or ''window.'' Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely. Mutually exclusive applications for reserved channel television stations will be resolved using the point system in subpart K of this part.

(2) Concurrently with the filing of a new or major modification application for a reserved noncommercial educational channel, the applicant shall submit to the FCC's public reference room and to a local public inspection file consistent with § 73.3527(e)(2), supporting documentation of points claimed, as described in the application form.

* * * * *

13. Section 73.3573 is amended by revising paragraphs (d) and (e) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(d) If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of an application for FM broadcast facilities, the same will be granted. If the FCC is unable to make such a finding and it appears that a hearing may be required, the procedure given in § 73.3593 will be followed. In the case of mutually exclusive applications for reserved channels, the procedures in subpart K of this part will be followed. In the case of mutually exclusive applications for unreserved channels, the procedures in subpart I of this part will be followed.

(e) *Processing reserved channel FM broadcast station applications.* (1) Applications for minor modifications for reserved channel FM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a ''first come/first served'' basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of the first acceptable application will be grouped, according to filing date, behind the lead application in the queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent conflicting applicants only reserves a place in the queue. The right of an applicant in a queue ripens only upon a final determination that the lead applicant is unacceptable and that the queue member is reached and found acceptable. The queue will remain behind the lead applicant until the construction permit is finally granted, at which time the queue dissolves.

(2) The FCC will specify by Public Notice a period for filing reserved channel FM applications for a new station or for major modifications in the facilities of an authorized station. FM reserved channel applications for new facilities or for major modifications will be accepted only during the appropriate filing period or ''window.'' Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

(3) Concurrently with the filing of a new or major modification application for a reserved noncommercial educational channel, the applicant shall submit to the FCC's public reference room and to a local public inspection file consistent with § 73.3527(e)(2), supporting documentation of points claimed, as described in the application form.

(4) Timely filed applications for new facilities or for major modifications for reserved FM channels will be processed pursuant to the procedures set forth in subpart K of this part (§ 73.7000 *et seq.*) Subsequently, the FCC will release Public Notices identifying: mutually exclusive groups of applications; applications selected pursuant to the fair distribution procedures set forth in § 73.7002; applications received during the window filing period which are found to be non-mutually exclusive; tentative selectees determined pursuant to the point system procedures set forth in § 73.7003; and acceptable applications. The Public Notices will also announce: additional procedures to be followed for certain groups of applications; deadlines for filing additional information; and dates by which petitions to deny must be filed in accordance with the provisions of § 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the application, it will be granted. If an application is determined unacceptable for filing, the application will be returned, and subject to the amendment requirements of § 73.3522.

* * * * *

14. Section 73.3584 is amended by adding a new first and second sentence to paragraph (a) immediately preceding ''Except'' to read as follows:

§ 73.3584 Procedure for filing petitions to deny.

(a) For mutually exclusive applications subject to selection by competitive bidding (non-reserved channels) or fair distribution/point system (reserved channels), petitions to deny may be filed only against the winning bidders or tentative selectee(s), and such petitions will be governed by §§ 73.5006 and 73.7004, respectively. For all other applications the following rules will govern. * * *

* * * * *

15. Section 73.3593 is revised to read as follows:

§ 73.3593 Designation for hearing.

If the FCC is unable, in the case of any application for an instrument of authorization, to make the findings specified in § 73.3591(a), it will formally designate the application for hearing on the grounds or reasons then obtaining

and will forthwith notify the applicant and all known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. If, however, the issue to be resolved is limited to the mutual exclusivity of applications for initial authorizations or for major changes to existing stations, that mutual exclusivity shall be resolved pursuant to competitive bidding procedures identified in subpart I (unreserved channels) or point system procedures identified in subpart K (reserved channels).

16. Add subpart K to part 73 to read as follows:

Subpart K—Application and Selection Procedures on Reserved Noncommercial Educational Channels

Sec.

73.7000 Definition of terms (as used in subpart K only).
73.7001 Services subject to evaluation by point system.
73.7002 Fair distribution of service on reserved band FM channels.
73.7003 Point system selection procedures.
73.7004 Petitions to deny tentative selectee(s).
73.7005 Holding period.

§ 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.

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 nonreserved 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)).

§ 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) Mutually exclusive applications for nonreserved broadcast channels are not subject to a point system, even if one or more of the applicants would be eligible to and intends to operate in a noncommercial educational manner. Mutually exclusive applications for nonreserved broadcast channels will be resolved by the competitive bidding procedures in subpart I of this part regardless of the noncommercial or commercial nature of the applicants.

§ 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) An applicant for a full service FM radio station that will provide the first or second noncommercial educational (NCE) aural signal to at least 10% of the population within the 60 dBu (1mV/m) service contours of a noncommercial educational FM station substantially furthers fair service goals and will be considered 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 new service will be awarded a construction permit, if it will provide such service to 5,000 or more people than the next best applicant. Otherwise, the mutually exclusive applications will proceed to examination under 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.

§ 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 § 73.685(a) for TV.

(3) *State-wide network.* Two points for an applicant that does not qualify for the credit for local diversity of ownership, if it is:

(i) An entity, public or private, with authority over a minimum of 50 accredited full-time elementary and/or secondary schools within a single state, encompassed by the combined primary service contours of the proposed station and its existing station(s), if the existing station(s) are regularly providing programming to the schools in furtherance of the school curriculum and the proposed station will increase the number of schools it will regularly serve; or

(ii) An accredited public or private institution of higher learning with a minimum of five full time campuses within a single state encompassed by the combined primary service contours of the proposed station and its existing station(s), if the existing station(s) are regularly providing programming to campuses in furtherance of their curriculum and the proposed station will increase the number of campuses it will regularly serve; or

(iii) An organization, public or private, with or without direct authority over schools, that will regularly provide programming for and in coordination with an entity described in paragraph (b)(3) (i) or (ii) of this section for use in the school curriculum.

(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;

(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.

§ 73.7004 Petitions to deny tentative selectee(s).

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

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

17. The authority citation for part 74 continues to read:

Authority: 47 U.S.C. 154, 303, 307, and 554.

18. Section 74.1233 is amended by adding paragraphs (b)(3) and (b)(4); revising paragraph (c)(1); removing paragraph (e)(4) and revising paragraphs (e)(3) introductory text, (e)(3), (i), (e)(3)(ii), and (e)(3)(iii) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(b) * * *

(3) Applications for reserved band FM translator stations will be processed using filing window procedures. The FCC will specify by Public Notice, a period for filing reserved band FM translator applications for a new station or for major modifications in the facilities of an authorized station. FM translator applications for new facilities or for major modifications will be accepted only during these specified periods. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

(4) Timely filed applications for new facilities or for major modifications for reserved band FM Translators will be processed pursuant to the procedures set forth in subpart K of Part 73 (§ 73.7000 *et seq.*) Subsequently, the FCC will release Public Notices identifying: mutually exclusive groups of applications; applications received during the window filing period which are found to be non-mutually exclusive; tentative selectees determined pursuant to the point system procedures set forth in § 73.7003 of this chapter; and acceptable applications. The Public Notices will also announce: additional procedures to be followed for certain groups of applications; deadlines for filing additional information; and dates by which petitions to deny must be filed in accordance with the provisions of § 73.7004 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the application, it will be granted. If an application is found not to be acceptable for filing, the application will be returned, and subject to the amendment requirements of § 73.3522 of this chapter.

(c) * * *

(1) There is not pending a mutually exclusive application.

* * * * *

(e) * * *

(3) Where there are no available frequencies to substitute for a mutually exclusive application, the FCC will apply the same point system identified for full service reserved band FM stations in § 73.7003(b) of this chapter. In the event of a tie, the FCC will consider:

(i) Each applicant's number of existing FM translator authorizations (licenses and construction permits) of the same type (fill-in or non fill-in as defined in paragraphs (e)(1) and (e)(2) of this section) as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee;

(ii) If a tie remains, after the tie breaker in paragraph (c)(3)(i) of this section, the remaining applicant with the fewest pending new and major change applications for FM translators of the same type (fill-in or non fill-in) will be chosen as tentative selectee;

(iii) Where the procedures in paragraphs (e)(1), (e)(2) and (e)(3)(i) and (e)(3)(ii) of this section fail to resolve the mutual exclusivity, the applications will be processed on a first-come-first-served basis.

[FR Doc. 00–14439 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; lifting of stay.

SUMMARY: This document announces that the Commission's voluntarily-imposed stay of the cable horizontal ownership rules was lifted on May 19, 2000 and that the cable horizontal ownership rules became effective on May 19, 2000.

DATES: The stay of 47 CFR 76.503(a) through (f) was lifted May 19, 2000. Parties not in compliance with the horizontal ownership rules on this date must come into compliance on or before November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418–7200 or via Internet at *dacooper@fcc.gov*.

SUPPLEMENTARY INFORMATION:

Synopsis of Action

1. On its own motion, the Commission reconsidered the conditions under which it would lift the voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503. These rules were adopted and stayed in part on October 8, 1999 at 64 FR 67198 (Dec 1, 1999).

2. Subsequently, the Commission ordered that its horizontal ownership rules be stayed until the U.S. Court of Appeals for the D.C Circuit issued a decision upholding the constitutionality of section 613(f)(1)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 533(f)(1)(A). The Commission also ordered that parties not in compliance with the rules on the date the U.S. Court of Appeals for the D.C. Circuit issued such decision must come into compliance within 180 days of the court decision. This order was published in the **Federal Register** (65 FR 12135, March 8, 2000).

3. On May 19, 2000, the U.S. Court of Appeals for the D.C. Circuit issued its decision, upholding the constitutionality of section 613(f)(1)(A) of the Act, as amended 47 U.S.C. 533(f)(1)(A).

Federal Communications Commission.

William H. Johnson,

Deputy Bureau Chief, Cable Services Bureau.

[FR Doc. 00–14538 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–U

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1604, 1615, 1632, and 1652

RIN 3206 AI67

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project; and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is issuing a final regulation to implement the portion of the Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit