

## FCC Revises Radio Allotment Preferences and Procedures

The FCC has adjusted certain of its preferences and procedures that govern the allotment of radio stations. It created a new dispositive priority for many Native American applicants, and took steps toward remedying several loopholes in its auction procedures.

- New Priorities for Native Americans – In an effort to redress its concern over a dearth of radio stations serving Tribal lands and Alaska Native villages, the Commission has created a new Tribal Priority. It will be available for applicants that (a) are a Tribe acknowledged by the federal government or are at least 51% owned or controlled by such Tribes; (b) propose a community of license located on Tribal lands; and (c) propose that at least 50% of their daytime principal community contour will cover reservations or certain adjacent communities. The Commission found that such a preference is not barred as a racial classification due to the unique legal status of Tribes under Federal law.
  - For noncommercial educational FM, any applicant that qualifies for this Tribal Priority and that proposes a first noncommercial service for its proposed community would automatically be awarded its construction permit. Ties between such applicants would be decided by any degree of difference in their proposed population coverage within Tribal lands; further ties among identical service proposals would be resolved through the existing point system for selecting among mutually-exclusive noncommercial educational FM applicants.
  - For FM channel allotments and AM applications, the traditional priorities will be modified to add a Tribal Priority that will favor the holder over any applicant not claiming a higher priority. Thus, for example, the holder of a Tribal Preference that proposes a first station to its community of license or service to significant “gray” (having only one reception service) area (thus triggering co-equal priorities (2) or (3)) would be preferred over any other proponent – except for a proponent that would eliminate significant amounts of “white” (completely unserved) area (traditional priority (1)).
  - The Commission is also launching a *Further Notice of Proposed Rule Making* to consider a special tribal bidding credit of up to 35% in auctions for new commercial facilities, which possibly could be used in addition to the 35% new entrant credit.
- Threshold Technical Eligibility to Participate in an AM Auction. Despite the protests of many frustrated auction participants, until now the FCC has refused to disqualify patently impossible proposals from participation in AM auctions. Rather, the FCC has allowed such defective applicants to cure their fatal defects when filing their “long form” should they be awarded a Section 307(b) preference or win an auction. In addition to unfairly skewing the competitive allocation or auction proceeding, defective applications remained in the database and blocked legitimate minor change applications that otherwise complied with the rules. Now, the Commission will require that the “short form” filing establish eligibility by meeting four basic technical criteria: daytime and nighttime community of license coverage; and daytime and nighttime protection of co- and adjacent-channel existing AM facilities, issued construction permits and prior-filed applications. AM applicants will have to include the following information on their short forms: (1) community of license, (2) frequency, (3) class, (4) hours

of operation, (5) day, night and critical hours power, (6) day, night and critical hours antenna location, and (7) all other antenna data. FCC staff will review the data and provide one opportunity to cure defects (other than failure to provide the required information, which will result in automatic dismissal). Other technical challenges will still await the outcome of the auction and can be filed only against the tentative winner's long form. The Commission cautions that this will not be a settlement opportunity, as the staff review will occur only prior to disclosure of other applications submitted during a filing window.

- Limits upon Downgrading AM Facilities Awarded through Dispositive 307(b) Preferences – The Commission has struck a new balance between the challenges of building new AM stations and the need to protect the integrity of the process for awarding dispositive preferences to mutually-exclusive AM applicants on the basis of their proposed service. For a period of four years following the commencement of on-air operation, the Commission will (a) bar changes in the proposed city of license and (b) permit only those technical changes that will continue to provide the same priority of service to at least 80% of the population originally proposed to be served. Note that the 80% coverage requirement does not require the same area but rather refers to the total population figure. Thus, any permitted change in a proposal to eliminate gray area to 1,000 people would have to result in elimination of gray area to a population of at least 800, even if located on the opposite side of the original service contour.
- Other Matters. The Commission also adopted several other adjustments to its procedures for selecting among new allotment proposals and applicants. These include:
  - Permitting partial settlements in future noncommercial FM windows, so long as at least one applicant can be granted as a result.
  - Authorizing its bureaus to limit the number of AM “short form” applications that any applicant or group of commonly-controlled applicants can submit in future filing windows.
  - Authorizing the bureaus to extend the usual 30-day deadline for the filing of long-form applications by winning auction bidders.

A complete copy of the *First Report and Order and Further Notice of Proposed Rule Making* in this matter is available on the FCC's website at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-24A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-24A1.pdf). Please let us know if you would like to discuss the impact of any of these FCC rule and policy changes.

If you have any questions or would like us to assist you with the required notification or application, contact [Peter Gutmann \(pgutmann@wcsr.com\)](mailto:pgutmann@wcsr.com), or any member of the firm's [Communications Law Group](#).

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