

settlements. We prefer this approach to that of holding applicants for NCE stations ineligible to apply for non-reserved spectrum. These policies are designed to preserve opportunities for applicants for NCE broadcast stations to use non-reserved spectrum, consistent with section 309(j), as amended, and in a manner that will not unduly delay the initiation of any broadcast service to the public. We recognize that these opportunities are limited to those situations in which commercial applicants do not file mutually exclusive applications for the spectrum, and to certain services in which the applicants reach a settlement, but these situations can and do happen.

17. As a practical matter, and as is currently our practice, we will begin the licensing process for non-reserved spectrum by opening an auctions filing window. Applicants for NCE stations may submit applications in the window in the same way as commercial applicants, using FCC Form 175, the "short-form" application to participate in an auction. Applicants that seek an NCE station license must identify themselves by checking the box labeled "noncommercial educational," which will serve as a preliminary showing that they intend to use the station to advance an educational program and that they meet all other Commission eligibility requirements for NCE stations. Applicants that do not check this box will be considered, as a matter of law, applicants for commercial broadcast stations. Because an applicant's self-identification as "noncommercial educational" affects its eligibility to hold an NCE station license and therefore its eligibility to participate in an auction, we will treat any applicant's attempt to change its self-identification as a major amendment, which is prohibited after the short-form application filing deadline. Applications for NCE stations that are mutually exclusive only with one another will not proceed to auction and instead will be resolved by the same point system selection procedures that we have established for the reserved band. Any application for an NCE station that is mutually exclusive with any application for a commercial broadcast station will, after any settlement opportunities expire, be returned as unacceptable for filing.

18. *Anti-Collusion Rule.* We adopt the approach outlined in the *2FNPRM* to amend our anti-collusion rule to permit mutually exclusive applicants for AM stations to settle, when the applicants include at least one for an NCE station. The anti-collusion rule generally prohibits applicants that have filed

mutually exclusive applications from "discussing or negotiating settlement agreements" among themselves after the short-form filing deadline. The Commission, however, has carved out limited exceptions for certain applicant groups in the broadcast and Instructional Fixed Television (ITFS) services, namely those involving applications for major modifications that are mutually exclusive with one another or with applications for new stations, as well as those involving secondary services. The Commission created these exceptions based in part on the fact that it is possible for the applicants to devise engineering solutions to remove the technical conflicts between their applications.

19. As a consequence of the exception for secondary services, applicants for NCE stations in the LPTV and translator services already have the opportunity to resolve their mutually exclusivity applications. Applicants for new AM stations also have the opportunity to settle when their applications are mutually exclusive with those for major modifications. We believe it will serve the public interest if we expand the settlement opportunity to applicants for new AM stations that are mutually exclusive with one another, when at least one of them is an applicant for an NCE station. Given the limited number of opportunities for any new stations using AM frequencies, this expansion to the groups that qualify for settlement is incremental. This is buttressed by the fact that we limit the groups of AM applicants eligible to enter into settlements to only those that include applicants for both commercial and NCE stations. We do not believe that extending settlement opportunities to applicants for NCE stations is particularly likely to compromise the purpose of the anti-collusion rule, which is to enhance the competitiveness of the auction process, given that these applicants will never compete at auction for the licenses for which they have applied. As a result, mixed groups of applicants for AM stations will have the opportunity to design engineering solutions or reach other settlements, which must conform to all requirements in our settlement process for broadcast applicants. Because we only accept applications for non-reserved full-power FM and full-power TV channels that are already in the Table of Allotments, it is not possible for applicants that file mutually exclusive applications for such channels to resolve their conflicts through engineering means; as a result, we will not extend a similar settlement opportunity to them.

C. Allocating Spectrum

20. *Background.* In the *R&O* in this proceeding, the Commission decided to allocate a channel as reserved if a proponent demonstrated: For radio, that it is technically precluded from using a reserved channel and would provide a first or second NCE radio service to 10% of the population within its 1mV/m contour, and for television, that there is no reserved channel available in the proponent's community and it would provide the first or second NCE television service to 2000 or more people who constitute 10% of the population within its noise limited contour. The Commission adopted these standards for use at the allocation stage of the licensing process, and thus expressly declined to extend them to existing (vacant) allotments, pending applications, and services such as AM that do not use an allocations process. In the *2FNPRM*, we asked whether we should further relax the reservation standards, and if so what the standard should be. We also asked whether we should establish opportunities for interested parties to reserve existing allotments that we have not yet licensed (*i.e.*, "vacant" allotments), and if so what the standards should be.

21. *Discussion.* We reaffirm the relaxed reservation standard that the Commission adopted in the *R&O* in this proceeding. We will permit the use of these criteria to reserve channels not only in future allocation proceedings, but also in allocation proceedings that the Commission initiated prior to its adoption of the relaxed reservation standard. We believe these policies best satisfy the public interest, and are the fairest to all parties concerned.

22. *Future Allocations.* The Commission already has reserved twenty (201–220) out of a total of one hundred FM channels for the exclusive use of NCE stations, and will reserve any of the remaining eighty channels (221–300) for NCE stations if one of three tests is satisfied. The Commission's original purpose in reserving a band of channels was simply to ensure that NCE stations would develop; when establishing the FM and TV services, the Commission was concerned that commercial stations, due to their financial advantage, would make such immediate use of the spectrum for these services that none would remain available for NCE stations when they were prepared to make use of it. In order to ensure that NCE stations could in fact make use of the reserved band of channels, the Commission adopted two tests for reserving channels outside this band;