

the Commission will allocate a new FM channel as reserved if a would-be applicant for an NCE station can show that it cannot use another reserved channel to provide its service without causing interference to either a foreign station or a domestic TV station operating on channel 6. Moreover, in order "to mitigate any potential hardship that the auction process might impose on noncommercial entities," the Commission adopted a third test for reserving channels outside 201–220 in the *R&O* in this proceeding. Under this third standard, the Commission will allocate a new FM channel as reserved if a would-be applicant for an NCE station can show that it is technically precluded from using a reserved channel, and that it will provide a first or second NCE service to 10% of the population within its proposed protected service contour. Since the Commission further relaxed the standard, several parties have asked the Commission to allocate a particular FM channel as reserved pursuant to the relaxed reservation standards, and we have done so.

23. Our third test thus requires a proponent for reservation to demonstrate that NCE service is needed in their proposed service area (by showing that they will provide the first or second NCE service within some portion of their proposed service contour), and to show that they are "technically precluded" from using a reserved channel. NCE service is not technically precluded if it is possible to specify a location at which same-class reserved band NCE facilities could be licensed to the proposed community in compliance with NCE technical rules. A reservation proponent must satisfy two criteria: First, that class-maximum facilities at the allotment reference site would provide a new first or second NCE service to ten percent or more of the population in the station's service area; and second, that a same-class reserved band facility that would provide the requisite level of new NCE service is—to a reasonable degree of certitude—technically precluded.

24. In order to expedite new service and minimize burdens to prospective NCE applicants, we will use the following methodology to evaluate allotment reservation requests. A reservation showing must satisfy two distinct criteria. First, it must establish the relative need for a new NCE service by demonstrating that maximum class facilities at the proposed allotment site would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and that such

population is at least 2000 persons. The Commission will not reserve a particular allotment if this "first or second service" criterion is not satisfied at the allotment site's reference coordinates.

25. Secondly, a reservation request must include a technical preclusion showing. The following test is designed to provide a reliable and efficient proxy of technical preclusion. It is not a conclusive test, but one that the Commission will treat as establishing a rebuttable presumption of technical preclusion. The showing will be based on a circle, centered in the proposed community of license and drawn with a radius one kilometer less than the distance to the predicted 60 dBu strength signal of a maximum same-class facility. The reservation showing must establish that no rule-compliant facility can be authorized at maximum antenna height above average terrain ("HAAT") and with maximum effective radiated power ("ERP") on any reserved band channel at four equally-spaced locations on the circle, beginning with 0 (zero) degrees. In addition, the reservation showing must establish that no same-class rule-compliant facility can be authorized at minimum antenna HAAT and with minimum ERP on any reserved band channel at the city center coordinates for the community of license. If these two criteria are satisfied, the reservation proponent has presumptively established that the allotment should be reserved, *i.e.*, that a nonreserved band FM station licensed to the proposed community with the proposed class facilities is technically precluded from providing service on a reserved band channel.

26. In the event that an NCE station can be licensed on one or more channels at any of these five sites in compliance with the NCE technical rules, the reservation showing must undertake a "first or second service" analysis of the technically acceptable facilities at each acceptable site. If any analyzed facility would satisfy the "first or second service" criterion, the allotment will not be reserved. If none of the identified channel/site combinations satisfy the "first or second service" criterion, then the reservation proponent has presumptively established that the allotment should be reserved.

27. A reservation showing will be conclusively rebutted if a party that desires a non-reserved allotment can both identify a single location from which a facility with a class-permissible power/height combination can be authorized in compliance with the rules, and show, with respect to that location, that the specified facilities

would satisfy the "first or second service" criterion. If no acceptable rebuttal showing is submitted, the allotment generally will be reserved. The staff may reject reservation showings if it determines that technically acceptable reserved band facilities can be licensed to the particular community, provided that such facilities meet the "first or second service" criterion.

28. We also clarify that a reservation request, accompanied with a complete technical preclusion showing, may be submitted as an original petition for rulemaking or as a timely counterproposal. If a reservation request is filed as a counterproposal and specifies the same community as the initial petition, the station class and allotment coordinates set forth in the initial petition would be used to determine technical preclusion. Conflicts between mutually exclusive allotments for different communities when a party has made the two-part reservation showing with respect to one community will be resolved under established Section 307(b) precedent. Reserved allotments will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service. In the event that all applications for a reserved band allotment fail to propose such service, the allotment will become unreserved by operation of law and subject to the Commission's competitive bidding licensing procedures.

29. *Vacant Allotments.* We will authorize entities to use the relaxed reservation standards that we reaffirm today not only for future allocations, but also for FM channels for which we initiated an allocation proceeding before the effective date of these standards, August 7, 2000, and for which we never opened a filing window to accept applications. There are approximately 450 such FM channels, including approximately 350 that were previously scheduled for auction. In determining whether to reevaluate the status of an FM channel that already has been the subject of an allocation rulemaking proceeding, we believe that the public interest requires us to weigh the delay in the introduction of new FM service to the public that would be associated with such a review, against the public interest benefits of additional review, and fairness to all interested parties. For FM channels for which Commission initiated an allocation proceeding before August 7, 2000, and for which it has no applications on file, we believe that the balance of these concerns favors further review. On the one hand is delay, as some commenters indicate, as well as