

unfairness to the proponents of these channels, each of which petitioned the Commission to allocate the channel, and has affirmatively expressed an interest in filing an application and competing for the channel at auction. On the other hand, proponents of channels have no "finder's preference" for them, and entities that wish to use these FM channels to operate NCE stations have not had meaningful opportunities to acquire the licenses for them. This is because these entities never had opportunities to reserve these channels using our relaxed reservation standards, and although we will still permit them to apply for these channels, their applications will be returned as soon as they become mutually exclusive with those for commercial stations. Allowing entities that wish to use these FM channels to operate NCE stations an opportunity to reserve them also ensures that we will allocate them as reserved or non-reserved according to whether there is a greater need for commercial or NCE service, as determined by our relaxed reservation standards, such that the delay of service occasioned by our further review of the nature of the channel is offset by the public interest benefit of more diverse service. Thus, on balance, we believe that the public interest is best served by allowing interested parties an opportunity to reserve FM channels using the standards that were not previously available to them. As a result, we will direct the staff to open a short window in the near future, during which interested parties may attempt to reserve any FM channel for which we initiated an allocation rulemaking before August 7, 2000, using the standards that became effective that day and that we reaffirm and clarify here. Interested parties objecting to any proffered reservation showing we receive may of course file opposing pleadings. We will release a Public Notice containing the details of our procedures for reserving vacant allotments in advance of the window.

30. We will not allow interested parties to use the relaxed reservation standards for any FM channel for which we initiated an allocation rulemaking after August 7, 2000. We believe the cost-benefit analysis associated with opening these rulemakings is different. The relaxed reservation standards were available to reserve any of these channels. Indeed, several parties have reserved allotments using the Commission's new standards. We do not believe it would serve the public interest to introduce additional delay to offer would-be applicants for NCE

stations yet another opportunity to attempt to reserve these channels using the criteria that have already been available to them.

31. *Pending Applications.* Consistent with our conclusion not to open these newer vacant allotments to reconsider reserving the channels, we also reaffirm the decision in then *R&O* in this proceeding not to permit applicants for NCE stations in pending mixed groups a further opportunity to reserve the channels for which they have applied. At the time of the *2FNPRM*, a total of forty mixed groups were pending. We offered these groups an opportunity to settle, and many took advantage of that opportunity, with the result that approximately twenty groups remain. The channels at issue here are altogether different from the allotments discussed because they have advanced to a farther point in our licensing process: the Commission opened a filing window for some of these channels nearly ten years ago, already had long-form applications on file for them, and in fact had originally scheduled to award the licenses by auction in 1999. As a result, when compared to the allotments for which we never opened a filing window, further review of the channels associated with the pending applications would cause even greater delay in our licensing process and the introduction of broadcast service, and also would cause greater unfairness to applicants for commercial stations, because all interested parties have spent the time and money necessary to complete all of the engineering and legal components of a long-form application. Particularly given that we have already offered settlement opportunities to all applicants in these pending cases, we are not persuaded that the equities favoring the applicants for NCE stations in these pending proceedings outweigh the delay in initiating new broadcast service to the public as well as the unfairness to applicants for commercial stations. As a result, we believe that it will serve the public interest best to return as unacceptable for filing the pending applications for NCE stations, and move the process forward by subjecting any remaining mutually exclusive applications to auction. This auction will be closed; we will not open a new filing window. Prior to auction, we will not review these applicants' long-form applications already on file, nor will we accept amendments to these forms. If only one commercial application remains after the return of all mutually exclusive NCE applications, we will process that applicant's pending long-form

application in accordance with our applicable rules. This approach will end the administrative delay in processing these applications, and will result in licensing new broadcast facilities to serve the public more quickly.

32. *Other Allocation Issues.* NPR, with the support of a few other commenters, asked us to reallocate TV channel 6 for NCE radio use. A number of NCE TV licensees, however, stated that this issue is outside the scope of this proceeding. We agree, and decline to adopt NPR's proposal. We also conclude that Amherst Alliance's request that we expand the reserved band, and limit eligibility to the expanded reserved particular types of NCE stations, is likewise outside the scope of this proceeding.

IV. Conclusion

33. This proceeding has required us to undertake the difficult task of deciding how to resolve the competing interests of applicants for commercial and NCE stations for non-reserved spectrum. We have attempted to create and maintain opportunities for applicants for NCE stations insofar as possible, consistent with the applicable legal standards, and fairness toward applicants for commercial stations. Our resolution of these issues will now enable the Commission to move forward quickly with licensing non-reserved spectrum, so that the ultimate licensees may provide service to the public.

V. Final Regulatory Flexibility Analysis

34. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *2FNPRM* in this docket. The Commission sought written public comment on the proposals in the *2FNPRM*, including comment on the IRFA. No comments addressed the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

Need for, and Objectives of, the Second Report and Order

35. The Commission adopts the *2R&O* to establish new policies for licensing spectrum that the Commission has not specifically reserved for the exclusive use of noncommercial educational ("NCE") broadcast stations. In the *R&O* in this docket, the Commission decided to resolve competing applications for commercial and NCE stations in this "non-reserved" spectrum via competitive bidding, but the U.S. Court of Appeals for the D.C. Circuit overturned that result. In the *2FNPRM* in this docket, the Commission sought