

FCC Streamlines FM Allotment Processes for Native Americans

The FCC has further streamlined its procedures for encouraging federally-recognized Native American Tribes and Alaska Native Villages (“Tribes”) to obtain new FM facilities.

In early 2010 the Commission established a Tribal Priority intended to enable Tribes to provide radio service to their communities and, more generally, to expand the diversity of radio ownership and programming. Early this year, the FCC took its first steps toward implementation, in which it established a § 307(b) preference for the AM and noncommercial FM services and proposed an auction bidding credit for commercial FM facilities. However, it has come to regard the bidding credit as insufficient, as others could outbid a Tribe. Instead, the FCC now has crafted an approach for commercial FM allotments based on threshold qualification. These procedures include its initial plan for allotting new commercial channels advocated by a qualified Tribal entity.

The new procedures will operate as follows:

- To qualify for a Tribal Priority: (1) an entity must either be, or be controlled by, a federally-recognized Tribe; (2) at least a portion of its Tribal Lands must lie within the principal community contour of the proposed facility; (3) the proposed community of license must be located on Tribal Lands; (4) the proposed service must provide first or second reception service, or first local Tribal-owned transmission service at the proposed community of license; and (5) either (a) at least 50% of the principal community contour must lie over Tribal Lands or (b) the proposed contour must encompass at least 50% of the Tribe’s Tribal Lands, the station must serve at least 2,000 people living on Tribal Lands, and the Tribal Lands population residing within the contour must constitute at least 50% of the facility’s total covered population.
- After a non-reserved FM channel is added to the Table of FM Allotments using the Tribal Priority, the FCC will open a special filing window limited to applicants meeting all the above Tribal Priority eligibility criteria.
- If only one qualified acceptable application is submitted, it will be processed promptly. If two or more are filed, they will be afforded a period of time for settlement or merger. However, settlements based on technical solutions will not be permitted, as they would circumvent the rulemaking process and its opportunities for public comment and counterproposals. If no settlement or merger is reached, the qualified Tribal applicants will proceed to auction.
- A four-year holding period will apply to all permits awarded in any of the above ways (that is, singletons, mergers, settlements or auctions among Tribal applicants). During the holding period license assignments or transfers of control will be permitted only to entities that would have been entitled to a Tribal Priority.
- If no qualified applicant bids in the first auction among qualified Tribal applicants, then the channel will be subject to the next general FM auction in which all potential bidders may participate. No Tribal bidding credit will be available.

These new rules and policies are detailed in the FCC’s Third Report and Order in MB Docket No. 09-52, FCC 11-190, released December 29, 2011. A copy can be downloaded from the FCC’s website at:
http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1229/FCC-11-190A1.pdf.

If you have any questions, please contact Peter Gutmann (pgutmann@wcsr.com) or (202) 857-4532) or any member of the firm’s [Communications Law](#) Group.

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