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## **FCC Announces Standards and Deadline For Requests to Reserve Hundreds of Vacant Commercial FM Channels For Noncommercial Use**

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The FCC recently opened the door for noncommercial broadcasters to attempt to reserve commercial FM channels for use solely by noncommercial stations. While such reservations have been permitted in the past, they have been extraordinarily rare, and the Commission has never laid out the welcome mat for them. Now, however, the FCC has given noncommercial broadcasters until November 21, 2003 to demonstrate which of 500 existing vacant commercial FM channels meet certain standards (described below) warranting the reservation of those channels for noncommercial operation. The 500 vacant channels include 350 which were scheduled for auction in 2001, but remained vacant after the auction was cancelled. Only vacant FM channels allotted prior to August 7, 2000 are affected.

The filing opportunity results from an FCC rulemaking establishing criteria for resolving conflicts among competing applications for new FM stations on commercial channels when those applications are filed by *both* commercial and noncommercial broadcasters. In 2000, the FCC issued its first decision in the rulemaking, requiring competing commercial and noncommercial applicants to participate in an auction in which the highest bidder would be granted the station.

However, a federal appeals court rejected that approach, finding that Congress precluded any arrangement under which noncommercial applicants might be required to pay for their channels. Back to the drawing board went the Commission. And in 2003, it came up with a new approach under which noncommercial applicants are barred from competing for a new FM station on a commercial channel once one or more commercial broadcasters file for that channel. Under that new approach, applications filed by noncommercial applicants will now be dismissed if one or more commercial broadcasters also apply for the channel.

Obviously, this new system puts something of a crimp in the plans of any noncommercial entity which had its eyes on one or more commercial channels. In an attempt to compensate for this, the FCC decided to open a one-time window during which

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noncommercial broadcasters could request that existing vacant commercial FM channels be reserved for noncommercial use. Such a reservation would preclude the filing of commercial applications for those channels, thus assuring the availability of those channels for noncommercial applicants. The window opened on September 30 and will close on November 21, 2003.

Requests to reserve a vacant commercial FM station for noncommercial use must be filed with the FCC in the form of a petition for rulemaking to amend the FM table of allotments. Each petition must demonstrate that: (1) maximum class facilities at the allotment coordinates for the channel would provide a first or second noncommercial service to at least 10% of the population within the station's 1 mV/m contour *and* the number of people which would receive first or second noncommercial service is at least 2,000; *and* (2) technical rules preclude use of any noncommercial channel (*i.e.*, Channels 201-220) in the same area.

The FCC established a detailed test for demonstrating such preclusion from using a noncommercial channel. A circle must be drawn centered on the allotment coordinates with a radius one kilometer less than the distance to the predicted 60 dBu signal of a maximum same-class facility. Four equally-spaced locations must be placed on the circle, beginning with zero degrees. The reservation request must show that no station with maximum facilities can be authorized on any noncommercial channel at any of the four locations on the circle or at the city center coordinates for the allotment community. Alternatively, if a noncommercial station can be authorized at any of the five sites (four on the circle and at center city), the reservation request must show that none of the noncommercial stations which could be authorized would provide first or second noncommercial service to at least 10% of the population within the station's 1 mV/m contour. Please keep in mind that this description of the required noncommercial reservation showing is not intended to be complete and interested parties should seek assistance from a qualified engineering consultant.

Of course, commercial broadcasters will have an opportunity to oppose requests to reserve channels for noncommercial use. To successfully oppose a noncommercial reservation, a commercial broadcaster need only identify one location at which a station with maximum class facilities on the allotted channel can be authorized and provide first or second noncommercial service to at least 10% of the population within the station's 1 mV/m contour.

The FCC has released a list of the approximately 500 vacant commercial FM channels for which the FCC is accepting requests for reservation as noncommercial channels. A copy of the list is available on our website at [www.fhhlaw.com](http://www.fhhlaw.com) or may be requested from the FHH attorney with whom you normally work. If you have any interest in either preserving one of the listed channels for commercial use, or possibly in seeking to have one of the channels reserved for noncommercial use, you should take a close look at the channel *now* in light of the showings which the Commission has announced. The opportunity to seek reservation will close on November 21, so time is particularly short on that front.