

AMENDMENTS TO FORM 340 – RURAL NPRM

SECTION III – Fair Distribution of Service Pursuant to 47 U.S.C. Section 307(b) (New and Major Changes to FM Radio Only) – Add new Question 1 before current question 1:

1. Applicant certifies that (1) it is a Federally Recognized Indian Tribe or tribal consortium, a member of a Native American or Alaska Native tribe, or an entity more than 70 percent owned or controlled by members of a Native American or Alaska Native tribe or tribes; (2) at least 50 percent of the daytime principal community contour of the facilities proposed in this Application will cover tribal lands; (3) the facilities proposed in this Application constitute either first or second aural reception service to a significant number of persons (specify the number of persons in an Exhibit), or will constitute the first local transmission service at the proposed community of license as of the close of the filing window in which this Application is being submitted; and (4) the proposed community of license is located on tribal lands. Applicants answering “Yes” must provide an Exhibit.

Yes No N/A

[Exhibit No.]

Current Questions 1 and 2 in Section III to be re-numbered Questions 2 and 3.

INSTRUCTIONS FOR SECTION III – PRELIMINARY FACTORS IN EVENT OF MUTUAL EXCLUSIVITY

This section is applicable only to applications for new and major changes to FM stations operating in the reserved band (Channels 200-220). This section enables us to consider, in the event of mutually exclusive FM applications that would serve different communities, whether service to one community over the other would best achieve our directive to distribute radio service fairly among communities. See 47 U.S.C. Section 307(b) (“Section 307(b”).

Question 1: The certification requests information relative to the “tribal priority” under Section 307(b), implemented in *Policies to Promote Rural Radio Service and to Streamline Auction, Allotment, and Assignment Policies*, Report and Order, 24 FCC Rcd XXXX (2009). The term “Federally-Recognized Indian Tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians. See *The Federally Recognized Indian Tribe List Act of 1994* (Indian

Tribe Act), Pub. L. 103-454. 108 Stat. 4791 (1994) (the Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians). *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080 (2000).

As used here, “tribal lands” means both “reservations” and “near reservation” lands. “Reservations” is defined as any Federally Recognized Indian Tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian allotments. 47 C.F.R. § 54.400(e). “Near reservation” is defined as “those areas or communities adjacent or contiguous to reservations which are designated by the Department of Interior’s Commission of Indian Affairs upon recommendation of the Local Bureau of Indian Affairs Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services on the basis of such general criteria as: Number of Indian people native to the reservation residing in the area; a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation; geographical proximity of the area to the reservation and administrative feasibility of providing an adequate level of services to the area.” *Id.* Thus, “tribal lands” includes American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, Hawaiian Homelands, and Alaska Native Village Statistical Areas, as well as the communities situated on such lands.

The daytime principal community contour for noncommercial educational FM stations in the reserved band is that set forth in 47 C.F.R. Section 73.515. Applicants answering “Yes” should provide an exhibit setting forth the tribal identity/identities of the applicant or applicant entity; identifying the number of people receiving first or second aural service, if applicable; and providing a map showing that at least 50 percent of the applicant’s principal community contour (60 dBu) covers tribal lands, and that the proposed community of license is on tribal land. First or second service to fewer than 2,000 people is considered insignificant.

Questions 2 and 3: The certification asks whether the station would provide a first or second noncommercial educational radio service to a significant population. The applicant’s population figures must be based on the most recent Census Block Data from the United States Bureau of Census. Applicants should use the centroid method of counting population (counting persons within each of the relevant census blocks). Applicants should calculate contours based on the standard predicted contours established in 47 C.F.R. Section 73.313(c). Applicants answering “Yes” should provide an exhibit identifying the population residing within the station’s 60 dBu service contour and the number of people receiving first or second NCE aural service. First or second service to

fewer than 2,000 people is considered insignificant. See Worksheet #6 for additional information.