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(a) The underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or

(b) The unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

[52 FR 37778, Oct. 9, 1987]

§ 21.20 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

(b) By way of illustration only, and not in any way limiting the scope of paragraph (a), the following are examples of common deficiencies which result in defective applications under paragraph (a):

(1) The application is not properly executed;

(2) The submitted filing fee (if a filing fee is required) is insufficient;

(3) The application does not demonstrate how the proposed radio facilities will serve the public interest, convenience or necessity;

(4) The application does not demonstrate compliance with the special requirements applicable to the radio service involved;

(5) The application does not certify the availability of the proposed station site.

(6) The application does not include the environmental assessment required for any significant environmental impact under the Commission's environmental rules (Part 1, Subpart I);

(7) The application does not specify the polarization and, where applicable, the antenna orientation azimuth and distance;

(8) The application does not include all necessary exhibits;

(9) The application is filed after the cutoff date prescribed in § 21.31 or § 21.914 of this part; or

(10) The application proposes the use of a frequency not allocated to such use.

(c) Applications considered defective under paragraph (a) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict; or

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 5294, Feb. 20, 1987; 52 FR 37779, Oct. 9, 1987; 55 FR 46009, Oct. 31, 1990; 58 FR 11797, Mar. 1, 1993; 61 FR 26674, May 28, 1996]

§ 21.21 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, the applicant's successor or assignee, or on behalf or for the benefit of the same applicant, the applicant's successor or assignee.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37779, Oct. 9, 1987]

§ 21.22 Repetitious applications.

(a) Where an applicant has been afforded an opportunity for a hearing with respect to a particular application for a new station, or for an extension or enlargement of a service or facilities, and the Commission has, after

hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by the applicant's successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station and for the same area, in whole or in part, filed by the same applicant or by the applicant's successor or assignee, or on behalf or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37779, Oct. 9, 1987]

§21.23 Amendment of applications.

(a) (1) Any pending application may be amended as a matter of right if the application has not been designated for hearing, or for comparative evaluation pursuant to §21.35, or for the random selection process, provided, however, that the amendments must comply with the provisions of §21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(2) A Multipoint Distribution Service application tentatively selected for qualification review by the random selection process may be amended as a matter of right up to 14 days after the date of the public notice announcing the tentative selection, provided, however, that the amendments must comply with the provisions of §21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(3) Provided, however, applications may not be amended if the amendments seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any amendment or application will be dismissed if the amendment or application seeks more than a *pro forma* change of ownership or control.

(b) Requests to amend an application designated for hearing or for comparative evaluation or for tentative selection for qualification review by the random selection process may be granted only if a written petition demonstrating good cause is submitted and properly served on the parties of record, except that Multipoint Distribution Service applications tentatively selected in a random selection process may be amended as a matter of right as provided in paragraph (a) of this section. Provided, however, requests to amend applications will not be granted that seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any application seeking more than a *pro forma* change of ownership or control will be dismissed.

(c) The Commission will classify amendments on a case-by-case basis. Whenever previous amendments have been filed, the most recent amendment will be classified by reference to how the information in question stood as of the latest Public Notice issued which concerned the application. An amendment will be deemed to be a major amendment subject to §21.27 and §21.31 under any of the following circumstances:

(1) If in the Multipoint Distribution Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

(i) A change in, or addition of, a radio frequency channel;

(ii) A change in polarization of the transmitted signal;

(iii) A change in type of transmitter emission or an increase in emission bandwidth of more than ten (10) percent;

(iv) A change in the geographic coordinates of a station's transmitting antenna of more than ten (10) seconds of latitude or longitude, or both;

(v) Any change which increases the antenna height by 3.0 meters (10 feet) or more;