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copies of the transcript available directly, free of charge, if it serves the financial or regulatory interests of the United States.

(c) The Commission will maintain a copy of the transcript or minutes for a period of at least two years after the meeting, or until at least one year after conclusion of the proceeding to which the meeting relates, whichever occurs later.

(d) The Commissioner presiding at the meeting will prepare a statement setting out the time and place of the meeting, the names of persons other than Commission personnel who were present at the meeting, and the names of Commission personnel who participated in the discussion. These statements will be retained in a public file in the Minute and Rules Branch, Office of the Secretary.

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APPENDIX A TO PART 1—A PLAN OF COOPERATIVE PROCEDURE IN MATTERS AND CASES UNDER THE PROVISIONS OF SECTION 410 OF THE COMMUNICATIONS ACT OF 1934

AUTHORITY: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

## Subpart A—General Rules of Practice and Procedure

SOURCE: 28 FR 12415, Nov. 22, 1963, unless otherwise noted.

GENERAL

### §1.1 Proceedings before the Commission.

The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. For such purposes it may subpena witnesses and require the production of evidence. Procedures to be followed by the Commission shall, unless specifically prescribed in this part, be such as in the opinion of the Commission will best serve the purposes of such proceedings.

(Sec. 403, 48 Stat. 1094; 47 U.S.C. 403)

### §1.2 Declaratory rulings.

The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

(5 U.S.C. 554)

### § 1.3 Suspension, amendment, or waiver of rules.

The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

CROSS REFERENCE: See subpart C of this part for practice and procedure involving rulemaking.

### § 1.4 Computation of time.

(a) *Purpose.* The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions.

(b) *General Rule—Computation of Beginning Date When Action is Initiated by Commission or Staff.* Unless otherwise provided, the first day to be counted when a period of time begins with an action taken by the Commission, an Administrative Law Judge or by members of the Commission or its staff pursuant to delegated authority is the *day after the day* on which public notice of that action is given. *See* § 1.4(b) (1)–(5) of this section. Unless otherwise provided, all Rules measuring time from the date of the issuance of a Commission document entitled ''Public Notice'' shall be calculated in accordance with this section. *See* § 1.4(b)(4) of this section for a description of the ''Public Notice'' document. Unless otherwise provided in § 1.4 (g) and (h) of this section, it is immaterial whether the first day is a ''holiday.'' For purposes of this section, the term *public notice* means the date of any of the following events: *See* § 1.4(e)(1) of this section for definition of ''holiday.''

(1) For documents in notice and comment rule making proceedings, including summaries thereof, the date of publication in the FEDERAL REGISTER.

*Example 1:* A document in a Commission rule making proceeding is published in the FEDERAL REGISTER on Wednesday, May 6, 1987. Public notice commences on Wednesday, May 6, 1987. The first day to be counted in computing the beginning date of a period of time for action in response to the document is Thursday, May 7, 1987, the ''day after the day'' of public notice.

*Example 2:* Section 1.429(e) provides that when a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the FEDERAL REGISTER. Section 1.429(f) provides that oppositions to a petition for reconsideration shall be filed within 15 days after public notice of the petition's filing in the FEDERAL REGISTER. Public notice of the filing of a petition for reconsideration is published in the FEDERAL REGISTER on Wednesday, June 10, 1987. For purposes of computing the filing period for an opposition, the first day to be counted is Thursday, June 11, 1987, which is the day after the date of public notice. Therefore, oppositions to the reconsideration petition must be filed by Thursday, June 25, 1987, 15 days later.

(2) For non-rulemaking documents released by the Commission or staff, whether or not published in the FEDERAL REGISTER, the release date. A document is ''released'' by making the full text available to the press and public in the Commission's Office of Public Affairs. The release date appears on the face of the document.

*Example 3:* The Chief, Mass Media Bureau, adopts an order on Thursday, April 2, 1987. The text of that order is not released to the public until Friday, April 3, 1987. Public notice of this decision is given on Friday, April 3, 1987. Saturday, April 4, 1987, is the first day to be counted in computing filing periods.

(3) For rule makings of particular applicability, if the rule making document is to be published in the FEDERAL REGISTER and the Commission so states in its decision, the date of public notice will commence on the day of the FEDERAL REGISTER publication date. If the decision fails to specify FEDERAL REGISTER publication, the date of public notice will commence on the release date, even if the document is subsequently published in the FEDERAL REGISTER. *See Declaratory Ruling,* 51 FR 23059 (June 25, 1986).

*Example 4:* An order establishing an investigation of a tariff, and designating issues to be resolved in the investigation, is released on Wednesday, April 1, 1987, and is published in the FEDERAL REGISTER on Friday, April 10, 1987. If the decision itself specifies FEDERAL

REGISTER publication, the date of public notice is Friday, April 10, 1987. If this decision does not specify FEDERAL REGISTER publication, public notice occurs on Wednesday, April 1, 1987, and the first day to be counted in computing filing periods is Thursday, April 2, 1987.

(4) If the full text of an action document is not to be released by the Commission, but a descriptive document entitled ''Public Notice'' describing the action is released, the date on which the descriptive ''Public Notice'' is released.

*Example 5:* At a public meeting the Commission considers an uncontested application to transfer control of a broadcast station. The Commission grants the application and does not plan to issue a full text of its decision on the uncontested matter. Five days after the meeting, a descriptive ''Public Notice'' announcing the action is publicly released. The date of public notice commences on the day of the release date.

*Example 6:* A Public Notice of petitions for rule making filed with the Commission is released on Wednesday, September 2, 1987; public notice of these petitions is given on September 2, 1987. The first day to be counted in computing filing times is Thursday, September 3, 1987.

(5) If a document is neither published in the FEDERAL REGISTER nor released, and if a descriptive document entitled ''Public Notice'' is not released, the date appearing on the document sent (e.g., mailed, telegraphed, etc.) to persons affected by the action.

*Example 7:* A Bureau grants a license to an applicant, or issues a waiver for non-conforming operation to an existing licensee, and no ''Public Notice'' announcing the action is released. The date of public notice commences on the day appearing on the license mailed to the applicant or appearing on the face of the letter granting the waiver mailed to the licensee.

(c) *General Rule—Computation of Beginning Date When Action is Initiated by Act, Event or Default.* Commission procedures frequently require the computation of a period of time where the period begins with the occurrence of an act, event or default and terminates a specific number of days thereafter. Unless otherwise provided, the first day to be counted when a period of time begins with the occurrence of an act, event or default is the day after the day on which the act, event or default occurs.

*Example 8:* Commission Rule §21.39(d) requires the filing of an application requesting consent to involuntary assignment or control of the permit or license within thirty days after the occurrence of the death or legal disability of the licensee or permittee. If a licensee passes away on Sunday, March 1, 1987, the first day to be counted pursuant to §1.4(c) is the day after the act or event. Therefore, Monday, March 2, 1987, is the first day of the thirty day period specified in §21.39(d).

(d) *General Rule—Computation of Terminal Date.* Unless otherwise provided, when computing a period of time the last day of such period of time is included in the computation, and any action required must be taken on or before that day.

*Example 9:* Paragraph 1.4(b)(1) of this section provides that ''public notice'' in a notice and comment rule making proceeding begins on the day of FEDERAL REGISTER publication. Paragraph 1.4(b) of this section provides that the first day to be counted in computing a terminal date is the ''day after the day'' on which public notice occurs. Therefore, if the commission allows or requires an action to be taken 20 days after public notice in the FEDERAL REGISTER, the first day to be counted is the day after the date of the FEDERAL REGISTER publication. Accordingly, if the FEDERAL REGISTER document is published on Thursday, July 23, 1987, public notice is given on Thursday, July 23, and the first day to be counted in computing a 20 day period is Friday, July 24, 1987. The 20th day or terminal date upon which action must be taken is Wednesday, August 12, 1987.

(e) Definitions for purposes of this section:

(1) The term *holiday* means Saturday, Sunday, officially recognized federal legal holidays and any other day on which the Commission's offices are closed and not reopened prior to 5:30 p.m. For example, a regularly scheduled Commission business day may become a *holiday* if its offices are closed prior to 5:30 p.m. due to adverse weather, emergency or other closing.

NOTE: As of August 1987, officially recognized federal legal holidays are New Year's Day, January 1; Martin Luther King's Birthday, third Monday in January; Washington's Birthday, third Monday in February; Memorial Day, last Monday in May; Independence Day, July 4; Labor Day, first Monday in September; Columbus Day, second Monday in October; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25. If a legal holiday falls on Saturday or Sunday, the holiday is taken, respectively, on the preceding Friday or the following Monday. In addition, January 20, (Inauguration Day)

following a Presidential election year is a legal holiday in the metropolitan Washington, DC area. If Inauguration Day falls on Sunday, the next succeeding day is a legal holiday. *See* 5 U.S.C. 6103; Executive Order No. 11582, 36 FR 2957 (Feb. 11, 1971). The determination of a ''holiday'' will apply only to the specific Commission location(s) designated as on ''holiday'' on that particular day.

(2) The term *business day* means all days, including days when the Commission opens later than the time specified in Rule § 0.403, which are not ''holidays'' as defined above.

(3) The term *filing period* means the number of days allowed or prescribed by statute, rule, order, notice or other Commission action for filing any document with the Commission. It does not include any additional days allowed for filing any document pursuant to paragraphs (g), (h) and (j) of this section.

(4) The term *filing date* means the date upon which a document must be filed after all computations of time authorized by this section have been made.

(f) Except as provided in § 0.401(b) of the Rules, all petitions, pleadings, tariffs or other documents not required to be accompanied by a fee and which are hand-delivered must be tendered for filing in complete form before 5:30 p.m. in the Office of the Secretary, either in Washington or Gettysburg, as directed by the Rules. The Secretary will determine whether a tendered document meets the pre-5:30 deadline.

(g) Unless otherwise provided (e.g., §§ 1.773 and 76.1502(e)(1) of this chapter), if the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date.

*Example 10:* A reply is required to be filed within 5 days after the filing of an opposition in a license application proceeding. The opposition is filed on Wednesday, June 10, 1987. The first day to be counted in computing the 5 day time period is Thursday, June 11, 1987. Saturday and Sunday are not counted because they are *holidays.* The document must be filed with the Commission on or before the following Wednesday, June 17, 1987.

(h) If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail (see § 1.47(f)), and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed to all parties in the proceeding for filing a response. This paragraph (§ 1.4(h)) shall not apply to documents filed pursuant to § 1.89, § 1.120(d), § 1.315(b) or § 1.316. For purposes of this paragraph service by facsimile shall be deemed equivalent to hand delivery.

*Example 11:* A reply to an opposition for a petition for reconsideration must be filed within 7 days after the opposition is filed. 47 CFR 1.106(h). The rules require that the opposition be served on the person seeking reconsideration. 47 CFR 1.106(g). If the opposition is served on the party seeking reconsideration by mail and the opposition is filed with the Commission on Monday, November 9, 1987, the first day to be counted is Tuesday, November 10, 1987 (the day after the day on which the event occurred, § 1.4(c)), and the seventh day is Monday, November 16. An additional 3 days (excluding holidays) is then added at the end of the 7 day period, and the reply must be filed no later than Thursday, November 19, 1987.

*Example 12:* Assume that oppositions to a petition in a particular proceeding are due 10 days after the petition is filed and must be served on the parties to the proceeding. If the petition is filed on October 28, 1993, the last day of the filing period for oppositions is Sunday, November 7. If service is made by mail, the opposition is due three days after November 7, or Wednesday, November 10.

(i) If both paragraphs (g) and (h) of this section are applicable, make the paragraph (g) computation before the paragraph (h) computation.

*Example 13:* Section 1.45(b) requires the filing of replies to oppositions within five days after the time for filing oppositions has expired. If an opposition has been filed on the last day of the filing period (Friday, July 10, 1987), and was served on the replying party by mail, § 1.4(i) of this section specifies that the paragraph (g) computation should be made before the paragraph (h) computation. Therefore, since the specified filing period is less than seven days, paragraph (g) is applied first. The first day of the filing period is Monday, July 13, 1987, and Friday, July 17, 1987 is the fifth day (the intervening weekend was not counted). Paragraph (h) is then applied to add three days for mailing (excluding holidays). That period begins on Monday, July 20, 1987. Therefore, Wednesday, July 22, 1987, is the date by which replies must be filed, since the intervening weekend is again not counted.

(j) Unless otherwise provided (e.g. § 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be

filed on the next business day. *See* paragraph (e)(1) of this section.

*Example 14:* The filing date falls on Friday, December 25, 1987. The document is required to be filed on the next business day, which is Monday, December 28, 1987.

(k) Where specific provisions of part 1 conflict with this section, those specific provisions of part 1 are controlling. *See,* e.g.,§§ 1.45(d), 1.773(a)(3) and 1.773(b)(2). Additionally, where § 76.1502(e) of this chapter conflicts with this section, those specific provisions of § 76.1502 are controlling. *See* e.g. 47 CFR 76.1502(e).

[52 FR 49159, Dec. 30, 1987; 53 FR 44196, Nov. 2, 1988, as amended at 56 FR 40567, 40568, Aug. 15, 1991; 58 FR 17529, Apr. 5, 1993; 61 FR 11749, Mar. 22, 1996; 62 FR 4170, Jan. 29, 1997; 62 FR 26238, May 13, 1997]

### § 1.5 Mailing address furnished by licensee.

(a) Each licensee shall furnish the Commission with an address to be used by the Commission in serving documents or directing correspondence to that licensee. Unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission for this purpose.

(b) The licensee is responsible for making any arrangements which may be necessary in his particular circumstances to assure that Commission documents or correspondence delivered to this address will promptly reach him or some person authorized by him to act in his behalf.

### § 1.6 Availability of station logs and records for Commission inspection.

(a) Station records and logs shall be made available for inspection or duplication at the request of the Commission or its representative. Such logs or records may be removed from the licensee's possession by a Commission representative or, upon request, shall be mailed by the licensee to the Commission by either registered mail, return receipt requested, or certified mail, return receipt requested. The return receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. A receipt shall be furnished when the logs or records are removed from the licensee's possession by a Commission representative and this receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. When the Commission has no further need for such records or logs, they shall be returned to the licensee. The provisions of this rule shall apply solely to those station logs and records which are required to be maintained by the provisions of this chapter.

(b) Where records or logs are maintained as the official records of a recognized law enforcement agency and the removal of the records from the possession of the law enforcement agency will hinder its law enforcement activities, such records will not be removed pursuant to this section if the chief of the law enforcement agency promptly certifies in writing to the Federal Communications Commission that removal of the logs or records will hinder law enforcement activities of the agency, stating insofar as feasible the basis for his decision and the date when it can reasonably be expected that such records will be released to the Federal Communications Commission.

### § 1.7 Documents are filed upon receipt.

Unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or of the Commission's staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.

[60 FR 16055, Mar. 29, 1995]

### § 1.8 Withdrawal of papers.

The granting of a request to dismiss or withdraw an application or a pleading does not authorize the removal of such application or pleading from the Commission's records.

### § 1.10 Transcript of testimony; copies of documents submitted.

In any matter pending before the Commission, any person submitting data or evidence, whether acting under compulsion or voluntarily, shall have the right to retain a copy thereof, or to procure a copy of any document submitted by him, or of any transcript

made of his testimony, upon payment of the charges therefor to the person furnishing the same, which person may be designated by the Commission. The Commission itself shall not be responsible for furnishing the copies.

[29 FR 14406, Oct. 20, 1964]

### § 1.12 Notice to attorneys of Commission documents.

In any matter pending before the Commission in which an attorney has appeared for, submitted a document on behalf of or been otherwise designated by a person, any notice or other written communication pertaining to that matter issued by the Commission and which is required or permitted to be furnished to the person will be communicated to the attorney, or to one of such attorneys if more than one is designated. If direct communication with the party is appropriate, a copy of such communication will be mailed to the attorney.

[29 FR 14406, Oct. 20, 1964]

### § 1.13 Filing of petitions for review and notices of appeals of Commission orders.

(a)(1) This section pertains to each party filing a petition for review in any United States court of appeals of a Commission Order, pursuant to section 402(a) of the Communications Act, 47 U.S.C. 402(a), and 28 U.S.C. 2342(l), that wishes to avail itself of procedures established for selection of a court in the case of multiple appeals, pursuant to 28 U.S.C. 2112(a). Each such party shall, within ten days after the issuance of that order, file with the General Counsel in the Office of General Counsel, Room 614, 1919 M Street NW., Washington, DC 20554, a copy of its petition for review as filed and date-stamped by the court of appeals within which it was filed. Such copies of petitions for review must be filed by 5:30 p.m. Eastern Time on the tenth day of the filing period. A stamp indicating the time and date received by the Office of General Counsel will constitute proof of filing. Upon receipt of any copies of petitions for review, the Commission shall follow the procedures established in section 28 U.S.C. 2112(a) to determine the court in which to file the record in that case.

(2) Computation of time of the ten-day period for filing copies of petitions for review of a Commission order shall be governed by § 1.4 of the Commission's Rules, 47 CFR 1.4. The date of issuance of a Commission order for purposes of filing copies of petitions for review shall be the date of public notice as defined in § 1.4(b), 47 CFR 1.4(b).

(b) Copies of notices of appeals filed pursuant to 47 U.S.C. 402(b) shall be served upon the General Counsel.

NOTE: For administrative efficiency, the Commission requests that any petitioner seeking judicial review of Commission actions pursuant to 47 U.S.C. 402(a) serve a copy of its petition on the General Counsel regardless of whether it wishes to avail itself of the procedures for multiple appeals set forth in 47 U.S.C. 2112(a).

[54 FR 12453, Mar. 27, 1989]

### § 1.14 Citation of Commission documents.

The appropriate reference to the FCC Record shall be included as part of the citation to any document that has been printed in the Record. The citation should provide the volume, page number and year, in that order (e.g., 1 FCC Rcd. 1 (1986). Older documents may continue to be cited to the FCC Reports, first or second series, if they were printed in the Reports (e.g., 1 FCC 2d 1 (1965)).

[51 FR 45890, Dec. 23, 1986]

### § 1.16 Unsworn declarations under penalty of perjury in lieu of affidavits.

Any document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person, except that, such declaration shall not be used in connection with: (a) A deposition, (b) an oath of office, or (c) an oath required to be taken before a specified official other than a notary public. Such

declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
(Signature)".

[48 FR 8074, Feb. 25, 1983]

### §1.17 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to some other matter within the jurisdiction of the Commission. No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

NOTE: Section 1.17 is limited in application to written matter. It implies no change in the Commission's existing policies respecting the obligation of applicants, permittees and licensees in all instances to respond truthfully to requests for information deemed necessary to the proper execution of the Commission's functions.

[55 FR 23084, June 6, 1990]

### §1.18 Administrative Dispute Resolution.

(a) The Commission has adopted an initial policy statement that supports and encourages the use of alternative dispute resolution procedures in its administrative proceedings and proceedings in which the Commission is a party, including the use of regulatory negotiation in Commission rulemaking matters, as authorized under the Administrative Dispute Resolution Act and Negotiated Rulemaking Act.

(b) In accordance with the Commission's policy to encourage the fullest possible use of alternative dispute resolution procedures in its administrative proceedings, procedures contained in the Administrative Dispute Resolution Act, including the provisions dealing with confidentiality, shall also be applied in Commission alternative dispute resolution proceedings in which the Commission itself is not a party to the dispute.

[56 FR 51178, Oct. 10, 1991, as amended at 57 FR 32181, July 21, 1992]

### §1.19 Use of metric units required.

Where parenthesized English units accompany metric units throughout this chapter, and the two figures are not precisely equivalent, the metric unit shall be considered the sole requirement; except, however, that the use of metric paper sizes is not currently required, and compliance with the English unit shall be considered sufficient when the Commission form requests that data showing compliance with that particular standard be submitted in English units.

[58 FR 44893, Aug. 25, 1993]

## PARTIES, PRACTITIONERS, AND WITNESSES

### §1.21 Parties.

(a) Any party may appear before the Commission and be heard in person or by attorney.

(b) The appropriate Bureau Chief(s) of the Commission shall be deemed to be a party to every adjudicatory proceeding (as defined in the Administrative Procedure Act) without the necessity of being so named in the order designating the proceeding for hearing.

(c) When, in any proceeding, a pleading is filed on behalf of either the General Counsel or the Chief Engineer, he shall thereafter be deemed a party to the proceeding.

(d) Except as otherwise expressly provided in this chapter, a duly authorized

corporate officer or employee may act for the corporation in any matter which has not been designated for an evidentiary hearing and, in the discretion of the presiding officer, may appear and be heard on behalf of the corporation in an evidentiary hearing proceeding.

[28 FR 12415, Nov. 22, 1963, as amended at 37 FR 8527, Apr. 28, 1972; 44 FR 39180, July 5, 1979; 51 FR 12616, Apr. 14, 1986]

### § 1.22 Authority for representation.

Any person, in a representative capacity, transacting business with the Commission, may be required to show his authority to act in such capacity.

### § 1.23 Persons who may be admitted to practice.

(a) Any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any state, territory or the District of Columbia, and who is not under any final order of any authority having power to suspend or disbar an attorney in the practice of law within any state, territory or the District of Columbia that suspends, enjoins, restrains, disbars, or otherwise restricts him or her in the practice of law, may represent others before the Commission.

(b) When such member of the bar acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that, under the provisions of this chapter and the law, he is authorized and qualified to represent the particular party in whose behalf he acts. Further proof of authority to act in a representative capacity may be required.

[28 FR 12415, Nov. 22, 1963, as amended at 57 FR 38285, Aug. 24, 1992]

### § 1.24 Censure, suspension, or disbarment of attorneys.

(a) The Commission may censure, suspend, or disbar any person who has practiced, is practicing or holding himself out as entitled to practice before it if it finds that such person:

(1) Does not possess the qualifications required by § 1.23;

(2) Has failed to conform to standards of ethical conduct required of practitioners at the bar of any court of which he is a member;

(3) Is lacking in character or professional integrity; and/or

(4) Displays toward the Commission or any of its hearing officers conduct which, if displayed toward any court of the United States or any of its Territories or the District of Columbia, would be cause for censure, suspension, or disbarment.

(b) Except as provided in paragraph (c) of this section, before any member of the bar of the Commission shall be censured, suspended, or disbarred, charges shall be preferred by the Commission against such practitioner, and he or she shall be afforded an opportunity to be heard thereon.

(c) Upon receipt of official notice from any authority having power to suspend or disbar an attorney in the practice of law within any state, territory, or the District of Columbia which demonstrates that an attorney practicing before the Commission is subject to an order of final suspension (not merely temporary suspension pending further action) or disbarment by such authority, the Commission may, without any preliminary hearing, enter an order temporarily suspending the attorney from practice before it pending final disposition of a disciplinary proceeding brought pursuant to § 1.24(a)(2), which shall afford such attorney an opportunity to be heard and directing the attorney to show cause within thirty days from the date of said order why identical discipline should not be imposed against such attorney by the Commission.

(d) Allegations of attorney misconduct in Commission proceedings shall be referred under seal to the Office of General Counsel. Pending action by the General Counsel, the decision maker may proceed with the merits of the matter but in its decision may make findings concerning the attorney's conduct only if necessary to resolve questions concerning an applicant and may not reach any conclusions regarding the ethical ramifications of the attorney's conduct. The General Counsel will determine if the allegations are substantial, and, if so,

shall immediately notify the attorney and direct him or her to respond to the allegations. No notice will be provided to other parties to the proceeding. The General Counsel will then determine what further measures are necessary to protect the integrity of the Commission's administrative process, including but not limited to one or more of the following:

(1) Recommending to the Commission the institution of a proceeding under paragraph (a) of this section;

(2) Referring the matter to the appropriate State, territorial, or District of Columbia bar; or

(3) Consulting with the Department of Justice.

[28 FR 12415, Nov. 22, 1963, as amended at 57 FR 38285, Aug. 24, 1992; 60 FR 53277, Oct. 13, 1995]

### § 1.25 [Reserved]

### § 1.26 Appearances.

Rules relating to appearances are set forth in §§ 1.87, 1.91, 1.221, and 1.703.

### § 1.27 Witnesses; right to counsel.

Any individual compelled to appear in person in any Commission proceeding may be accompanied, represented, and advised by counsel as provided in this section. (Regulations as to persons seeking voluntarily to appear and give evidence are set forth in § 1.225.)

(a) Counsel may advise his client in confidence, either upon his own initiative or that of the witness, before, during, and after the conclusion of the proceeding.

(b) Counsel for the witness will be permitted to make objections on the record, and to state briefly the basis for such objections, in connection with any examination of his client.

(c) At the conclusion of the examination of his client, counsel may ask clarifying questions if in the judgment of the presiding officer such questioning is necessary or desirable in order to avoid ambiguity or incompleteness in the responses previously given.

(d) Except as provided by paragraph (c) of this section, counsel for the witness may not examine or cross-examine any witness, or offer documentary evidence, unless authorized by the Commission to do so.

(5 U.S.C. 555)

[29 FR 12775, Sept. 10, 1964]

### §§ 1.28–1.29 [Reserved]

## PLEADINGS, BRIEFS, AND OTHER PAPERS

### § 1.41 Informal requests for Commission action.

Except where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally. Requests should set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions (if any) pursuant to which the request is filed and under which relief is sought, and the interest of the person submitting the request.

### § 1.42 Applications, reports, complaints; cross-reference.

(a) Rules governing applications and reports are contained in subparts D, E, and F of this part.

(b) Special rules governing complaints against common carriers arising under the Communications Act are set forth in subpart E of this part.

### § 1.43 Requests for stay; cross-reference.

General rules relating to requests for stay of any order or decision are set forth in §§ 1.41, 1.44(e), 1.45 (d) and (e), and 1.298(a). See also §§ 1.102, 1.106(n), and 1.115(h).

### § 1.44 Separate pleadings for different requests.

(a) Requests requiring action by the Commission shall not be combined in a pleading with requests for action by an administrative law judge or by any person or persons acting pursuant to delegated authority.

(b) Requests requiring action by an administrative law judge shall not be combined in a pleading with requests for action by the Commission or by any person or persons acting pursuant to delegated authority.

(c) Requests requiring action by any person or persons pursuant to delegated authority shall not be combined in a pleading with requests for action by any other person or persons acting pursuant to delegated authority.

(d) Pleadings which combine requests in a manner prohibited by paragraph (a), (b), or (c) of this section may be returned without consideration to the person who filed the pleading.

(e) Any request to stay the effectiveness of any decision or order of the Commission shall be filed as a separate pleading. Any such request which is not filed as a separate pleading will not be considered by the Commission.

NOTE: Matters which are acted on pursuant to delegated authority are set forth in subpart B of part 0 of this chapter. Matters acted on by the hearing examiner are set forth in § 0.341.

### § 1.45 Pleadings; filing periods.

Except as otherwise provided in this chapter, pleadings in Commission proceedings shall be filed in accordance with the provisions of this section.

(a) *Oppositions.* Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed. For matters related to part 22 of the rules, these microfiche copies must be filed within 15 calendar days of the paper filing (see § 22.6).

(b) *Replies.* The person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired. The reply shall be limited to matters raised in the oppositions, and the response to all such matters shall be set forth in a single pleading; separate replies to individual oppositions shall not be filed. For matters related to part 22 of the rules, three microfiche copies must be filed within 15 calendar days of the paper filing (see § 22.6).

(c) *Additional pleadings.* Additional pleadings may be filed only if specifically requested or authorized by the Commission.

(d) *Requests for temporary relief; shorter filing periods.* Oppositions to a request for stay of any order or to a request for other temporary relief shall be filed within 7 days after the request is filed. Replies to oppositions should not be filed and will not be considered. The provisions of § 1.4(h) shall not apply in computing the filing date for oppositions to a request for stay or for other temporary relief.

(e) *Ex parte disposition of certain pleadings.* As a matter of discretion, the Commission may rule *ex parte* upon requests for continuances and extensions of time, requests for permission to file pleadings in excess of the length prescribed in this chapter, and requests for temporary relief, without waiting for the filing of oppositions or replies.

NOTE: Where specific provisions contained in part 1 conflict with this section, those specific provisions are controlling. See, in particular, §§ 1.294(c), 1.298(a), and 1.773.

[28 FR 12415, Nov. 22, 1963, as amended at 33 FR 7153, May 15, 1968; 45 FR 64190, Sept. 29, 1980; 54 FR 31032, July 26, 1989; 54 FR 37682, Sept. 12, 1989]

### § 1.46 Motions for extension of time.

(a) It is the policy of the Commission that extensions of time shall not be routinely granted.

(b) Motions for extension of time in which to file responses to petitions for rulemaking, replies to such responses, comments filed in response to notice of proposed rulemaking, replies to such comments and other papers in rulemaking proceedings conducted under subpart C of this part shall be filed at least 7 days before the filing date. If a timely motion is denied, the responses and comments, replies thereto, or other papers need not be filed until 2 business days after the Commission acts on the motion. In emergency situations, the Commission will consider a late-filed motion for a brief extension of time related to the duration of the emergency and will consider motions for acceptance of comments, reply comments or other papers filed after the filing date.

(c) If a motion for extension of time in which to file papers in proceedings other than notice and comment rule making proceedings is filed less than 7 days prior to the day for filing the papers, the party filing the motion shall (in addition to serving the motion on other parties) orally notify other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.

[39 FR 43301, Dec. 12, 1974, as amended at 41 FR 9550, Mar. 5, 1976; 41 FR 14871, Apr. 8, 1976; 42 FR 28887, June 6, 1977]

### §1.47 Service of documents and proof of service.

(a) Where the Commission or any person is required by statute or by the provisions of this chapter to serve any document upon any person, service shall (in the absence of specific provisions in this chapter to the contrary) be made in accordance with the provisions of this section.

(b) Where any person is required to serve any document filed with the Commission, service shall be made by that person or by his representative on or before the day on which the document is filed: *Provided, however,* That formal complaints filed under section 208 of the Communications Act will be served by the Commission.

(c) Commission counsel who formally participate in any proceeding shall be served in the same manner as other persons who participate in that proceeding. The filing of a document with the Commission does not constitute service upon Commission counsel.

(d) Documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. When a party is represented by an attorney of record in a formal proceeding, service shall be made upon such attorney.

(e) Delivery of a copy pursuant to this section means handing it to the party, his attorney, or other duly constituted agent; or leaving it with the clerk or other person in charge of the office of the person being served; or, if there is no one in charge of such office, leaving it in a conspicuous place therein; or, if such office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(f) Service by mail is complete upon mailing.

(g) Proof of service, as provided in this section, shall be filed before action is taken. The proof of service shall show the time and manner of service, and may be by written acknowledgement of service, by certificate of the person effecting the service, or by other proof satisfactory to the Commission. Failure to make proof of service will not affect the validity of the service. The Commission may allow the proof to be amended or supplied at any time, unless to do so would result in material prejudice to a party.

[28 FR 12415, Nov. 22, 1963, as amended at 40 FR 55644, Dec. 1, 1975; 53 FR 11852, Apr. 11, 1988]

### §1.48 Length of pleadings.

(a) Affidavits, statements, tables of contents and summaries of filings, and other materials which are submitted with and factually support a pleading are not counted in determining the length of the pleading. If other materials are submitted with a pleading, they will be counted in determining its length; and if the length of the pleadings, as so computed, is greater than permitted by the provisions of this chapter, the pleading will be returned without consideration.

(b) It is the policy of the Commission that requests for permission to file pleadings in excess of the length prescribed by the provisions of this chapter shall not be routinely granted. Where the filing period is 10 days or less, the request shall be made within 2 business days after the period begins to run. Where the period is more than 10 days, the request shall be filed at least 10 days before the filing date. (See §1.4.) If a timely request is made, the pleading need not be filed earlier than 2 business days after the Commission acts upon the request.

[41 FR 14871, Apr. 8, 1976, and 49 FR 40169, Oct. 15, 1984]

### §1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in any Commission proceeding shall be typewritten or prepared by mechanical processing methods, and shall be filed on A4 (21 cm. × 29.7 cm.) or on 8½ × 11 inch (21.6 cm. × 27.9 cm.) paper with the margins set so that the printed material does not exceed 6½ × 9½ inches (16.5 cm. × 24.1 cm.). The printed material may be in any typeface of at least 12-point (0.42333 cm. or 12/72″) in height. The body of the text must be double spaced with a minimum distance of 7/32 of an inch (0.5556 cm.) between each line of text. Footnotes and long, indented quotations may be single

spaced, but must be in type that is 12-point or larger in height, with at least 1/16 of an inch (0.158 cm.) between each line of text. Counsel are cautioned against employing extended single spaced passages or excessive footnotes to evade prescribed pleading lengths. If single-spaced passages or footnotes are used in this manner the pleading will, at the discretion of the Commission, either be rejected as unacceptable for filing or dismissed with leave to be refiled in proper form. Pleadings may be printed on both sides of the paper. Pleadings that use only one side of the paper shall be stapled, or otherwise bound, in the upper left-hand corner; those using both sides of the paper shall be stapled twice, or otherwise bound, along the left-hand margin so that it opens like a book. The foregoing shall not apply to printed briefs specifically requested by the Commission, official publications, charted or maps, original documents (or admissible copies thereof) offered as exhibits, specially prepared exhibits, or if otherwise specifically provided. All copies shall be clearly legible.

(b) Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which as computed under this chapter exceeds ten pages, shall include, as part of the pleading or document, a table of contents with page references.

(c) Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which filings as computed under this chapter exceeds ten pages, shall include, as part of the pleading or document, a summary of the filing, suitably paragraphed, which should be a succinct, but accurate and clear condensation of the substance of the filing. It should not be a mere repetition of the headings under which the filing is arranged. For pleadings and documents exceeding ten but not twenty-five pages in length, the summary should seldom exceed one and never two pages; for pleadings and documents exceeding twenty-five pages in length, the summary should seldom exceed two and never five pages.

(d) The requirements of paragraphs (b) and (c) of this section shall not apply to:

(1) Interrogatories or answers to interrogatories, and depositions;

(2) FCC forms or applications;

(3) Transcripts;

(4) Contracts and reports;

(5) Letters; or

(6) Hearing exhibits, and exhibits or appendicies accompanying any document or pleading submitted to the Commission.

(e) In addition to the provisions above, pleadings related to Part 22 of the rules, must also be submitted on microfiche. See § 22.6 for specifications.

NOTE: The table of contents and the summary pages shall not be included in complying with any page limitation requirements as set forth by Commission rule.

[40 FR 19198, May 2, 1975, as amended at 47 FR 26393, June 18, 1982; 51 FR 16322, May 2, 1986; 54 FR 31032, July 26, 1989; 58 FR 44893, Aug. 25, 1993; 59 FR 37721, July 25, 1994]

### § 1.50 Specifications as to briefs.

The Commission's preference is for briefs that are typewritten or prepared by mechanical processing methods. Printed briefs will be accepted only if specifically requested by the Commission. Typewritten or mechanically produced briefs must conform to all of the specifications for pleadings and documents set forth in § 1.49.

[59 FR 37721, July 25, 1994]

### § 1.51 Number of copies of pleadings, briefs and other papers.

Except as otherwise specifically provided in the Commission's rules and regulations, the number of copies of pleadings, briefs, and other papers to be filed is as follows:

(a) In hearing proceedings, the following number of copies shall be filed:

(1) If the paper filed relates to a matter to be acted upon by the presiding officer or the Chief Administrative Law Judge, an original and 6 copies shall be filed.

(2) If the paper filed relates to matters to be acted on by the Commission, an original and 14 copies shall be filed.

(3) If more than one person presided (is presiding) at the hearing an additional copy shall be filed for each such additional person.

(b) In rulemaking proceedings which have not been designated for hearing, see section 1.419 of this chapter.

(c) In matters other than rule making and hearing cases, the following number of copies shall be filed:

(1) If the paper filed relates to matters to be acted on by the Commission, an original and 4 copies shall be filed. If the matter relates to Part 22 of the rules, see § 22.6.

(2) If the paper filed related to matters to be acted on by staff officials under delegated authority, an original and 4 copies shall be filed. If the matter relates to Part 22 of the rules, see § 22.6.

(d) Where statute or regulation provides for service by the Commission of papers filed with the Commission, an additional copy of such papers shall be filed for each person to be served.

(e) The parties to any proceeding may, on notice, be required to file additional copies of any or all papers filed in that proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303))

[40 FR 48136, Oct. 14, 1975, as amended at 41 FR 50399, Nov. 16, 1976; 45 FR 64190, Sept. 29, 1980; 45 FR 79486, Dec. 1, 1980; 50 FR 26567, June 27, 1985; 54 FR 29037, July 11, 1989; 54 FR 31032, July 26, 1989; 62 FR 4170, Jan. 29, 1997]

### § 1.52 Subscription and verification.

The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address. Either the original document, or an electronic reproduction of such original document containing the facsimile signature of the attorney or unrepresented party is acceptable for filing. If a facsimile copy of a document is filed, the signatory shall retain the original until the Commission's decision is final and no longer subject to judicial review. Except when otherwise specifically provided by rule or statute, documents signed by the attorney for a party need not be verified or accompanied by affidavit. The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If the original of a document is not signed or is signed with intent to defeat the purpose of this section, or an electronic reproduction does not contain a facsimile signature, it may be stricken as sham and false, and the matter may proceed as though the document had not been filed. An attorney may be subjected to appropriate disciplinary action, pursuant to § 1.24, for a willful violation of this rule or if scandalous or indecent matter is inserted.

[50 FR 19360, May 8, 1985]

## General Application Procedures

### § 1.61 Procedures for handling applications requiring special aeronautical study.

(a) Antenna Structure Registration is conducted by the Wireless Telecommunications Bureau as follows:

(1) Each antenna structure owner that must notify the FAA of proposed construction using FAA Form 7460–1 shall, upon proposing new or modified construction, register that antenna structure with the Wireless Telecommunications Bureau using FCC Form 854.

(2) If an Environmental Assessment is required under § 1.1307, the Bureau will address the environmental concerns prior to processing the registration.

(3) If a final FAA determination of ''no hazard'' is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(4) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC

Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by § 17.4(g) of this chapter.

(5) Upon receipt of FCC Form 854, and attached final FAA determination of ''no hazard,'' the Bureau prescribes antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation and returns a completed Antenna Structure Registration (FCC Form 854R) to the registrant. If the proposed structure is disapproved the registrant is so advised.

(b) Each operating Bureau or Office examines the applications for Commission authorization for which it is responsible to ensure compliance with FAA notification procedures as well as Commission Antenna Structure Registration as follows:

(1) If Antenna Structure Registration is required, the operating Bureau reviews the application for the Antenna Structure Registration Number and proceeds as follows:

(i) If the application contains the Antenna Structure Registration Number or if the applicant seeks a Cellular or PCS system authorization, the operating Bureau processes the application.

(ii) If the application does not contain the Antenna Structure Registration Number, but the structure owner has already filed FCC Form 854, the operating Bureau places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(iii) If the application does not contain the Antenna Structure Registration Number, and the structure owner has not filed FCC Form 854, the operating Bureau notifies the applicant that FCC Form 854 must be filed and places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(2) If Antenna Structure Registration is not required, the operating Bureau processes the application.

(c) Where one or more antenna farm areas have been designated for a community or communities (see § 17.9 of this chapter), an application proposing the erection of an antenna structure over 1,000 feet in height above ground to serve such community or communities will not be accepted for filing unless:

(1) It is proposed to locate the antenna structure in a designated antenna farm area, or

(2) It is accompanied by a statement from the Federal Aviation Administration that the proposed structure will not constitute a menace to air navigation, or

(3) It is accompanied by a request for waiver setting forth reasons sufficient, if true, to justify such a waiver.

NOTE: By Commission Order (FCC 65–455), 30 FR 7419, June 5, 1965, the Commission issued the following policy statement concerning the height of radio and television antenna towers:

''We have concluded that this objective can best be achieved by adopting the following policy: Applications for antenna towers higher than 2,000 feet above ground will be presumed to be inconsistent with the public interest, and the applicant will have a burden of overcoming that strong presumption. The applicant must accompany its application with a detailed showing directed to meeting this burden. Only in the exceptional case, where the Commission concludes that a clear and compelling showing has been made that there are public interest reasons requiring a tower higher than 2,000 feet above ground, and after the parties have complied with applicable FAA procedures, and full Commission coordination with FAA on the question of menace to air navigation, will a grant be made. Applicants and parties in interest will, of course, be afforded their statutory hearing rights.''

[28 FR 12415, Nov. 22, 1963, as amended at 32 FR 8813, June 21, 1967; 32 FR 20860, Dec. 28, 1967; 34 FR 6481, Apr. 15, 1969; 45 FR 55201, Aug. 19, 1980; 58 FR 13021, Mar. 9, 1993, 61 FR 4361, Feb. 6, 1996]

### § 1.62 Operation pending action on renewal application.

(a)(1) Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license with respect to any activity of a continuing nature, in accordance with the provisions of section 9(b) of the Administrative Procedure Act, such license shall continue in effect without further action by the Commission until such time as the Commission shall make a final determination with respect to the

renewal application. No operation by any licensee under this section shall be construed as a finding by the Commission that the operation will serve the public interest, convenience, or necessity, nor shall such operation in any way affect or limit the action of the Commission with respect to any pending application or proceeding.

(2) A licensee operating by virtue of this paragraph shall, after the date of expiration specified in the license, post, in addition to the original license, any acknowledgment received from the Commission that the renewal application has been accepted for filing or a signed copy of the application for renewal of license which has been submitted by the licensee, or in services other than broadcast and common carrier, a statement certifying that the licensee has mailed or filed a renewal application, specifying the date of mailing or filing.

(b) Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal or extension of the term of a license with respect to any activity not of a continuing nature, the Commission may in its discretion grant a temporary extension of such license pending determination of such application. No such temporary extension shall be construed as a finding by the Commission that the operation of any radio station thereunder will serve the public interest, convenience, or necessity beyond the express terms of such temporary extension of license, nor shall such temporary extension in any way affect or limit the action of the Commission with respect to any pending application or proceeding.

(c) Except where an instrument of authorization clearly states on its face that it relates to an activity not of a continuing nature, or where the noncontinuing nature is otherwise clearly apparent upon the face of the authorization, all licenses issued by the Commission shall be deemed to be related to an activity of a continuing nature.

(5 U.S.C. 558)

**§1.65 Substantial and significant changes in information furnished by applicants to the Commission.**

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Except where paragraph (b) of this section applies, whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate. Except where paragraph (b) of this section applies, whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with §1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For the purposes of this section, an application is ''pending'' before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

(b) Changes in information relating to §1.1622, lottery preferences, must be furnished to the Commission no more than 7 days after the changes occur until: (1) In the case of a non-mutually exclusive application, the Commission releases the Public Notice proposing the application for grant; or (2) in the case of a mutually exclusive application, the Commission releases the final

Public Notice announcing the acceptance of the last-filed mutually exclusive application.

(c) All broadcast permittees and licensees must report annually to the Commission any adverse finding or adverse final action taken by any court or administrative body that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with an application for renewal as reflected in the renewal form. If a report is required by this paragraph(s), it shall be filed on the anniversary of the date that the licensee's renewal application is required to be filed, except that licensees owning multiple stations with different anniversary dates need file only one report per year on the anniversary of their choice, provided that their reports are not more than one year apart. Permittees and licensees bear the obligation to make diligent, good faith efforts to become knowledgeable of any such reportable adjudicated misconduct.

NOTE: The terms *adverse finding* and *adverse final action* as used in paragraph (c) of this section include adjudications made by an ultimate trier of fact, whether a government agency or court, but do not include factual determinations which are subject to review *de novo* unless the time for taking such review has expired under the relevant procedural rules. The pendency of an appeal of an adverse finding or adverse final action does not relieve a permittee or licensee from its obligation to report the finding or action.

[48 FR 27200, June 13, 1983, as amended at 55 FR 23084, June 6, 1990; 56 FR 25635, June 5, 1991; 56 FR 44009, Sept. 6, 1991; 57 FR 47412, Oct. 16, 1992]

### § 1.68 Action on application for license to cover construction permit.

(a) An application for license by the lawful holder of a construction permit will be granted without hearing where the Commission, upon examination of such application, finds that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest.

(b) In the event the Commission is unable to make the findings in paragraph (a) of this section, the Commission will designate the application for hearing upon specified issues.

(Sec. 319, 48 Stat. 1089, as amended; 47 U.S.C. 319)

### § 1.77 Detailed application procedures; cross references.

The application procedures set forth in §§ 1.61 through 1.68 are general in nature. More detailed procedures are set forth in this chapter as follows:

(a) Rules governing applications for authorizations in the Broadcast Radio Services are set forth in subpart D of this part.

(b) Rules governing applications for authorizations in the Common Carrier Radio Services are set forth in subpart E of this part.

(c) Rules governing applications for authorizations in the Private Radio Services are set forth in subpart F of this part.

(d) Rules governing applications for authorizations in the Experimental Radio Services (other than broadcast) are set forth in part 5 of this chapter.

(e) Rules governing applications for authorizations in the Domestic Public Radio Services are set forth in part 21 of this chapter.

(f) Rules governing applications for authorizations in the Industrial, Scientific, and Medical Service are set forth in part 18 of this chapter.

(g) Rules governing applications for type approval and type acceptance of equipment are set forth in part 2, subpart F, of this chapter.

(h) Rules governing applications for commercial radio operator licenses are set forth in part 13 of this chapter.

(i) Rules governing applications for authorizations in the Common Carrier and Private Radio terrestrial microwave services and Local Multipoint Distribution Services are set out in part 101 of this chapter.

[28 FR 12415, Nov. 22, 1963, as amended at 44 FR 39180, July 5, 1979; 47 FR 53378, Nov. 26, 1982; 61 FR 26670, May 28, 1996; 62 FR 23162, Apr. 29, 1997]

MISCELLANEOUS PROCEEDINGS

**§ 1.80 Forfeiture proceedings.**

(a) *Persons against whom and violations for which a forfeiture may be assessed.* A forfeiture penalty may be assessed against any person found to have:

(1) Willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument of authorization issued by the Commission;

(2) Willfully or repeatedly failed to comply with any of the provisions of the Communications Act of 1934, as amended; or of any rule, regulation or order issued by the Commission under that Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding on the United States;

(3) Violated any provision of section 317(c) or 508(a) of the Communications Act; or

(4) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code.

A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1), (b)(2) and (b)(3) of this section shall not apply to conduct which is subject to a forfeiture penalty under sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 362(a), 362(b), 386(a), 386(b), 503(b), 506, and 634 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed $27,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $275,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $110,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,100,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraphs (b)(1) or (b)(2) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $11,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $82,500 for any single act or failure to act described in paragraph (a) of this section.

NOTE: For information concerning notices of apparent liability and notices of opportunity for hearing, see paragraphs (e), (f), and (g) of this section.

(4) *Factors considered in determining the amount of the forfeiture penalty.* In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

*Note to paragraph (b)(4):*

GUIDELINES FOR ASSESSING FORFEITURES

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated

in Section 503 of the Communications Act and the Commission's Rules are $25,000 for broadcasters and cable operators or applicants, $100,000 for common carriers or applicants, and $10,000 for all others. These base amounts listed are for a single violation or single day of a continuing violation. 47 U.S.C. 503(b)(2); 47 CFR 1.80. For continuing violations involving a single act or failure to act, the statute limits the forfeiture to $250,000 for broadcasters and cable operators or applicants, $1,000,000 for common carriers or applicants, and $75,000 for all others. *Id.* Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, section 31001, 110 Stat. 1321 (1996), civil monetary penalties assessed by the federal government, whether set by statutory maxima or specific dollar amounts as provided by federal law, must be adjusted for inflation at least every four years based on the formula outlined in the DCIA. Thus, the statutory maxima increased to $27,500 for broadcasters and cable operators or applicants; $110,000 for common carriers or applicants, and $11,000 for others. For continuing violations, the statutory maxima increased to $27,500 for broadcasters, cable operators, or applicants; $1,100,000 for common carriers or applicants; and $82,500 for others. The increased statutory maxima became effective March 5, 1997. There is an upward adjustment factor for repeated or continuous violations, see Section II, *infra*. That upward adjustment is not necessarily applied on a per violation or per day basis. *Id.* Unless Commission authorization is required for the behavior involved, a Section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or common carrier can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. 503(b)(5). A prior citation is not required, however, for non-licensee tower owners who have previously received notice of the obligations imposed by Section 303(q) and part 17 of the Commission's rules from the Commission. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this note.

*Section I.—Base Amounts for Section 503 Forfeitures*

| Forfeitures | Violation Amount |
|---|---|
| Misrepresentation/lack of candor | (1) |
| Construction and/or operation without an instrument of authorization for the service | $10,000 |
| Failure to comply with prescribed lighting and/or marking | 10,000 |
| Violation of public file rules | 10,000 |
| Violation of political rules: reasonable access, lowest unit charge, equal opportunity, and discrimination | 9,000 |
| Unauthorized substantial transfer of control | 8,000 |
| Violation of children's television commercialization or programming requirements | 8,000 |
| Violations of rules relating to distress and safety frequencies | 8,000 |
| False distress communications | 8,000 |
| EAS equipment not installed or operational | 8,000 |
| Alien ownership violation | 8,000 |
| Failure to permit inspection | 7,000 |
| Transmission of indecent/obscene materials | 7,000 |
| Interference | 7,000 |
| Importation or marketing of unauthorized equipment | 7,000 |
| Exceeding of authorized antenna height | 5,000 |
| Fraud by wire, radio or television | 5,000 |
| Unauthorized discontinuance of service | 5,000 |
| Use of unauthorized equipment | 5,000 |
| Exceeding power limits | 4,000 |
| Failure to respond to Commission communications | 4,000 |
| Violation of sponsorship ID requirements | 4,000 |
| Unauthorized emissions | 4,000 |
| Using unauthorized frequency | 4,000 |
| Failure to engage in required frequency coordination | 4,000 |
| Construction or operation at unauthorized location | 4,000 |
| Violation of requirements pertaining to broadcasting of lotteries or contests | 4,000 |
| Violation of transmitter control and metering requirements | 3,000 |
| Failure to file required forms or information | 3,000 |
| Failure to make required measurements or conduct required monitoring | 2,000 |
| Failure to provide station ID | 1,000 |
| Unauthorized pro forma transfer of control | 1,000 |
| Failure to maintain required records | 1,000 |

[1] Statutory Maximum for each Service.

*Violations Unique to the Service*

| Violation | Services affected | Amount |
|---|---|---|
| Unauthorized conversion of long distance telephone service. | Common Carrier | $40,000 |
| Violation of operator services requirements. | Common Carrier | 7,000 |
| Violation of pay-per-call requirements. | Common Carrier | 7,000 |
| Failure to implement rate reduction or refund order. | Cable | 7,500 |
| Violation of cable program access rules. | Cable | 7,500 |
| Violation of cable leased access rules. | Cable | 7,500 |
| Violation of cable cross-ownership rules. | Cable | 7,500 |
| Violation of cable broadcast carriage rules. | Cable | 7,500 |
| Violation of pole attachment rules. | Cable | 7,500 |
| Failure to maintain directional pattern within prescribed parameters. | Broadcast | 7,000 |
| Violation of main studio rule. | Broadcast | 7,000 |
| Violation of broadcast hoax rule. | Broadcast | 7,000 |
| AM tower fencing | Broadcast | 7,000 |
| Broadcasting telephone conversations without authorization. | Broadcast | 4,000 |

| Violation | Services affected | Amount |
|---|---|---|
| Violation of enhanced underwriting requirements. | Broadcast | 2,000 |

*Section II. Adjustment Criteria for Section 503 Forfeitures*

Upward Adjustment Criteria

(1) Egregious misconduct.
(2) Ability to pay/relative disincentive.
(3) Intentional violation.
(4) Substantial harm.
(5) Prior violations of any FCC requirements.
(6) Substantial economic gain.
(7) Repeated or continuous violation.

Downward Adjustment Criteria

(1) Minor violation.
(2) Good faith or voluntary disclosure.
(3) History of overall compliance.
(4) Inability to pay.

*Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors*

Unlike Section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under Section 504 of the Act. The one exception is Section 223 of the Act, which provides a maximum of $50,000 per day. For convenience, the Commission will treat the $50,000 set forth in Section 223 as if it were a prescribed base amount, subject to downward adjustments. The following amounts were adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA) Public Law 104–134, section 31001, 110 Stat 1321 (1996). The new amounts became effective on March 5, 1997. These non-Section 503 forfeitures may be adjusted downward using the ''Downward Adjustment Criteria'' shown for Section 503 forfeitures in Section II of this note.

| Violation | Statutory amount ($) |
|---|---|
| Sec. 202(c) Common Carrier Discrimination | 6,600 330/day |
| Sec. 203(e) Common Carrier Tariffs | 6,600 330/day |
| Sec. 205(b) Common Carrier Prescriptions | 13,200 |
| Sec. 214(d) Common Carrier Line Extensions | 1,200/day |
| Sec. 219(b) Common Carrier Reports | 1,200 |
| Sec. 220(d) Common Carrier Records & Accounts | 6,600/day |
| Sec. 223(b) Dial-a-Porn | 55,000 maximum/day |
| Sec. 364(a) Ship Station Inspection | 5,500 (owner) |
| Sec. 364(b) Ship Station Inspection | 1,100 (vessel master) |
| Sec. 386(a) Forfeitures | 5,500/day (owner) |
| Sec. 386(b) Forfeitures | 1,100 (vessel master) |
| Sec. 634 Cable EEO | 500/day |

(5) *Inflation adjustments to the maximum forfeiture amount.* (i) Pursuant to the Debt Collection Improvement Act of 1996, Public Law 104–134 (110 Stat. 1321–358), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101–410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted for inflation at least once every four years using the following formula. First, obtain the inflation factor by dividing the CPI for June of the preceding year by the CPI for June of the year the forfeiture was last set or adjusted. Then, multiply the inflation factor by the statutory maximum amount. Round off this result using the rules in paragraph (b)(5)(ii) of this section. Add the rounded result to the statutory maximum forfeiture penalty amount. The sum is the statutory maximum amount, adjusted for inflation.

(ii) The rounding rules are as follows:

(A) Round increase to the nearest multiple of $10 if the penalty is from $0 to $100;

(B) Round increase to the nearest multiple of $100 if the penalty is from $101 to $1,000;

(C) Round increase to the nearest multiple of $1,000 if the penalty is from $1,001 to $10,000;

(D) Round increase to the nearest multiple of $5,000 if the penalty is from $10,001 to $100,000;

(E) Round increase to the nearest multiple of $10,000 if the penalty is from $100,001 to $200,000; or

(F) Round increase to the nearest multiple of $25,000 if the penalty is over $200,001.

(iii) The first application of the inflation adjustments required by Public Law 104–134 results in the following adjustments to the statutory forfeitures

currently authorized by the Communications Act:

| U.S. Code citation | Current statutory maximum penalty | Maximum penalty after Public Law 104–134 adjustment |
|---|---|---|
| 47 USC 202(c) | $6,000 | $6,600 |
| | 300 | 330 |
| 47 USC 203(e) | 6,000 | 6,600 |
| | 300 | 330 |
| 47 USC 205(b) | 12,000 | 13,200 |
| 47 USC 214(d) | 1,200 | 1,200 |
| 47 USC 219(b) | 1,200 | 1,200 |
| 47 USC 220(d) | 6,000 | 6,600 |
| 47 USC 223(b) | 50,000 | 55,000 |
| 47 USC 362(a) | 5,000 | 5,500 |
| 47 USC 362(b) | 1,000 | 1,100 |
| 47 USC 386(a) | 5,000 | 5,500 |
| 47 USC 386(b) | 1,000 | 1,100 |
| 47 USC 503(b)(2)(A) | 25,000 | 27,500 |
| | 250,000 | 275,000 |
| 47 USC 503(b)(2)(B) | 100,000 | 110,000 |
| | 1,000,000 | 1,100,000 |
| 47 USC 503(b)(2)(C) | 10,000 | 11,000 |
| | 75,000 | 82,500 |
| 47 USC 506(a) | 500 | 550 |
| 47 USC 506(b) | 100 | 110 |
| 47 USC 554 | 500 | 500 |

NOTE: Pursuant to Public Law 104–134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

(c) *Limits on the time when a proceeding may be initiated.* (1) In the case of a broadcast station, no forfeiture penalty shall be imposed if the violation occurred more than 1 year prior to the issuance of the appropriate notice or prior to the date of commencement of the current license term, whichever is earlier. For purposes of this paragraph, ''date of commencement of the current license term'' means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

(2) In the case of a forfeiture imposed against a carrier under sections 202(c), 203(e), and 220(d), no forfeiture will be imposed if the violation occurred more than 5 years prior to the issuance of a notice of apparent liability.

(3) In all other cases, no penalty shall be imposed if the violation occurred more than 1 year prior to the date on which the appropriate notice is issued.

(d) *Preliminary procedure in some cases; citations.* No forfeiture penalty shall be imposed upon any person under this section, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person: (1) Is sent a citation reciting the violation charged; (2) is given a reasonable opportunity (usually 30 days) to request a personal interview with a Commission official, at the field office which is nearest to such person's place of residence; and (3) subsequently engages in conduct of the type described in the citation. However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Paragraph (c) of this section does not limit the issuance of citations. When the requirements of this paragraph have been satisfied with respect to a particular violation by a particular person, a forfeiture penalty may be imposed upon such person for conduct of the type described in the citation without issuance of an additional citation.

(e) *Alternative procedures.* In the discretion of the Commission, a forfeiture proceeding may be initiated either: (1) By issuing a notice of apparent liability, in accordance with paragraph (f) of this section, or (2) a notice of opportunity for hearing, in accordance with paragraph (g).

(f) *Notice of apparent liability.* Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission or its designee will issue a written notice of apparent liability.

(1) *Content of notice.* The notice of apparent liability will:

(i) Identify each specific provision, term, or condition of any act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, or instrument of authorization

which the respondent has apparently violated or with which he has failed to comply,

(ii) Set forth the nature of the act or omission charged against the respondent and the facts upon which such charge is based,

(iii) State the date(s) on which such conduct occurred, and

(iv) Specify the amount of the apparent forfeiture penalty.

(2) *Delivery*. The notice of apparent liability will be sent to the respondent, by certified mail, at his last known address (see § 1.5).

(3) *Response*. The respondent will be afforded a reasonable period of time (usually 30 days from the date of the notice) to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent.

(4) *Forfeiture order*. If the proposed forfeiture penalty is not paid in full in response to the notice of apparent liability, the Commission, upon considering all relevant information available to it, will issue an order canceling or reducing the proposed forfeiture or requiring that it be paid in full and stating the date by which the forfeiture must be paid.

(5) *Judicial enforcement of forfeiture order*. If the forfeiture is not paid, the case will be referred to the Department of Justice for collection under section 504(a) of the Communications Act.

(g) *Notice of opportunity for hearing*. The procedures set out in this paragraph will ordinarily be followed only when a hearing is being held for some reason other than the assessment of a forfeiture (such as, to determine whether a renewal application should be granted) and a forfeiture is to be considered as an alternative or in addition to any other Commission action. However, these procedures may be followed whenever the Commission, in its discretion, determines that they will better serve the ends of justice.

(1) Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission will issue a notice of opportunity for hearing. The hearing will be a full evidentiary hearing before an administrative law judge, conducted under procedures set out in subpart B of this part, including procedures for appeal and review of initial decisions. A final Commission order assessing a forfeiture under the provisions of this paragraph is subject to judicial review under section 402(a) of the Communications Act.

(2) If, after a forfeiture penalty is imposed and not appealed or after a court enters final judgment in favor of the Commission, the forfeiture is not paid, the Commission will refer the matter to the Department of Justice for collection. In an action to recover the forfeiture, the validity and appropriateness of the order imposing the forfeiture are not subject to review.

(3) Where the possible assessment of a forfeiture is an issue in a hearing case to determine which pending application should be granted, and the applicant facing a potential forfeiture is dismissed pursuant to a settlement agreement or otherwise, and the presiding judge has not made a determination on the forfeiture issue, the order of dismissal shall be forwarded to the attention of the full Commission. Within the time provided by § 1.117, the Commission may, on its own motion, proceed with a determination of whether a forfeiture against the dismissing applicant is warranted. If the Commission so proceeds, it will provide the applicant with a reasonable opportunity to respond to the forfeiture issue (see paragraph (f)(3) of this section) and make a determination under the procedures outlined in paragraph (f) of this section.

(h) *Payment*. The forfeiture should be paid by check or money order drawn to the order of the Federal Communications Commission. The Commission does not accept responsibility for cash payments sent through the mails. The check or money order should be mailed to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673–7482.

(i) *Remission and mitigation*. In its discretion, the Commission, or its designee, may remit or reduce any forfeiture imposed under this section. After issuance of a forfeiture order, any request that it do so shall be submitted

as a petition for reconsideration pursuant to § 1.106.

(j) *Effective date.* Amendments to paragraph (b) of this section implementing Pub. L. No. 101–239 are effective December 19, 1989.

[43 FR 49308, Oct. 23, 1978, as amended at 48 FR 15631, Apr. 12, 1983; 50 FR 40855, Oct. 7, 1985; 55 FR 25605, June 22, 1990; 56 FR 25638, June 5, 1991; 57 FR 23161, June 2, 1992; 57 FR 47006, Oct. 14, 1992; 57 FR 48333, Oct. 23, 1992; 58 FR 6896, Feb. 3, 1993; 58 FR 27473, May 10, 1993; 62 FR 4918, Feb. 3, 1997; 62 FR 43475, Aug. 14, 1997]

EFFECTIVE DATE NOTE: At 62 FR 43475, Aug. 14, 1997, the note to paragraph (b)(4) was added, effective Oct. 14, 1997.

### § 1.83 Applications for radio operator licenses.

(a) Application filing procedures for amateur radio operator licenses are set forth in part 97 of this chapter.

(b) Application filing procedures for commercial radio operator licenses are set forth in part 13 of this chapter. Detailed information about application forms, filing procedures, and where to file applications for commercial radio operator licenses is contained in the bulletin ''Commercial Radio Operator Licenses and Permits.'' This bulletin is available from the Private Radio Bureau, Licensing Division, Consumer Assistance Branch, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

[47 FR 53378, Nov. 26, 1982, as amended at 58 FR 13021, Mar. 9, 1993]

### § 1.84 Procedure with respect to commercial radio operator license applications.

(a) Upon acceptance of an application for a commercial radio operator license, filed in accordance with part 13 of this chapter, an examination, if required, is conducted. If the applicant is found qualified and eligible in all respects, the license will be issued. If additional information is necessary to determine an applicant's qualifications or eligibility, or if it appears that a grant of an application would not serve the public interest, the applicant will be notified in writing and given an opportunity to provide additional pertinent information in writing. If, from the information available, it appears that the applicant is not qualified or is ineligible, or that a grant of the application would not serve the public interest, the applicant will be advised thereof in writing and given an opportunity to request, within a specified period of time, that the application be set for hearing. If the applicant does not request, within the specified period, that the application be set for hearing, the application will be denied.

(b)–(c) [Reserved]

(d) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice where an application has not yet been designated for hearing; such dismissal may be made with prejudice after an application has been designated for hearing.

(Sec. 303(l), 48 Stat. 1082, as amended; 47 U.S.C. 303(l))

[29 FR 15965, Nov. 24, 1964, as amended at 47 FR 53378, Nov. 26, 1982]

### § 1.85 Suspension of operator licenses.

Whenever grounds exist for suspension of an operator license, as provided in section 303(m) of the Communications Act, the Chief of the Private Radio Bureau, with respect to amateur and commercial radio operator licenses, may issue an order suspending the operator license. No order of suspension of any operator's license shall take effect until 15 days' notice in writing of the cause for the proposed suspension has been given to the operator licensee, who may make written application to the Commission at any time within the said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Private Radio Bureau and said suspension

shall be held in abeyance until the conclusion of the hearing. Upon the conclusion of said hearing, the Commission may affirm, modify, or revoke said order of suspension. If the license is ordered suspended, the operator shall send his operator license to the office of the Commission in Washington, DC, on or before the effective date of the order, or, if the effective date has passed at the time notice is received, the license shall be sent to the Commission forthwith.

(Sec. 303(m), 48 Stat. 1082, as amended; 47 U.S.C. 303(m))

[28 FR 10415, Nov. 22, 1963, as amended at 44 FR 39180, July 5, 1979; 58 FR 13021, Mar. 9, 1993]

### § 1.87 Modification of license or construction permit on motion of the Commission.

(a) Whenever it appears that a station license or construction permit should be modified, the Commission shall notify the licensee or permittee in writing of the proposed action and reasons therefor, and afford the licensee or permittee at least thirty days to protest such proposed order of modification, except that, where safety of life or property is involved, the Commission may by order provide a shorter period of time.

(b) The notification required in paragraph (a) of this section may be effectuated by a notice of proposed rule making in regard to a modification or addition of an FM or television channel to the Table of Allotments (§§ 73.202 and 73.504) or Table of Assignments (§ 73.606). The Commission shall send a copy of any such notice of proposed rule making to the affected licensee or permittee by certified mail, return receipt requested.

(c) Any other licensee or permittee who believes that its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

(d) Any protest filed pursuant to this section shall be subject to the requirements of section 309 of the Communications Act of 1934, as amended, for petitions to deny.

(e) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission except that, with respect to any issue that pertains to the question of whether the proposed action would modify the license or permit of a person filing a protest pursuant to paragraph (c) of this section, such burdens shall be as described by the Commission.

(f) In order to utilize the right to a hearing and the opportunity to appear and give evidence upon the issues specified in any hearing order, the licensee or permittee, in person or by attorney, shall, within the period of time as may be specified in the hearing order, file with the Commission a written statement stating that he or she will appear at the hearing and present evidence on the matters specified in the hearing order.

(g) The right to file a protest or have a hearing shall, unless good cause is shown in a petition to be filed not later than 5 days before the lapse of time specified in paragraph (a) or (f) of this section, be deemed waived:

(1) In case of failure to timely file the protest as required by paragraph (a) of this section or a written statement as required by paragraph (f) of this section.

(2) In case of filing a written statement provided for in paragraph (f) of this section but failing to appear at the hearing, either in person or by counsel.

(h) Where the right to file a protest or have a hearing is waived, the licensee or permittee will be deemed to have consented to the modification as proposed and a final decision may be issued by the Commission accordingly. Irrespective of any waiver as provided for in paragraph (g) of this section or failure by the licensee or permittee to raise a substantial and material question of fact concerning the proposed modification in his protest, the Commission may, on its own motion, designate the proposed modification for hearing in accordance with this section.

(i) Any order of modification issued pursuant to this section shall include a statement of the findings and the grounds and reasons therefor, shall

specify the effective date of the modification, and shall be served on the licensee or permittee.

[52 FR 22654, June 15, 1987]

### § 1.88 Predesignation pleading procedure.

In cases where an investigation is being conducted by the Commission in connection with the operation of a broadcast station or a pending application for renewal of a broadcast license, the licensee may file a written statement to the Commission setting forth its views regarding the matters under investigation; the staff, in its discretion, may in writing, advise such licensee of the general nature of the investigation, and advise the licensee of its opportunity to submit such a statement to the staff. Any filing by the licensee will be forwarded to the Commission in conjunction with any staff memorandum recommending that the Commission take action as a result of the invesigation. Nothing in this rule shall supersede the application of our *ex parte* rules to situations described in § 1.1203 of these rules.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

[45 FR 65597, Oct. 3, 1980]

### § 1.89 Notice of violations.

(a) Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, any person who holds a license, permit or other authorization appearing to have violated any provision of the Communications Act or any provision of this chapter will, before revocation, suspension, or cease and desist proceedings are instituted, be served with a written notice calling these facts to his or her attention and requesting a statement concerning the matter. FCC Form 793 may be used for this purpose. The Notice of Violation may be combined with a Notice of Apparent Liability to Monetary Forfeiture. In such event, notwithstanding the Notice of Violation, the provisions of § 1.80 apply and not those of § 1.89.

(b) Within 10 days from receipt of notice or such other period as may be specified, the recipient shall send a written answer, in duplicate, directly to the Commission office originating the official notice. If an answer cannot be sent or an acknowledgment cannot be made within such 10-day period by reason of illness or other unavoidable circumstance, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay.

(c) The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. In every instance the answer shall contain a statement of action taken to correct the condition or omission complained of and to preclude its recurrence. In addition:

(1) If the notice relates to violations that may be due to the physical or electrical characteristics of transmitting apparatus and any new apparatus is to be installed, the answer shall state the date such apparatus was ordered, the name of the manufacturer, and the promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application shall be given, or if a file number has not been assigned by the Commission, such identification shall be given as will permit ready identification of the application.

(2) If the notice of violation relates to lack of attention to or improper operation of the transmitter, the name and license number of the operator in charge (where applicable) shall be given.

[48 FR 24890, June 3, 1983]

### § 1.91 Revocation and/or cease and desist proceedings; hearings.

(a) If it appears that a station license or construction permit should be revoked and/or that a cease and desist order should be issued, the Commission will issue an order directing the person to show cause why an order of revocation and/or a cease and desist order, as the facts may warrant, should not be issued.

(b) An order to show cause why an order of revocation and/or a cease and desist order should not be issued will contain a statement of the matters with respect to which the Commission

is inquiring and will call upon the person to whom it is directed (the respondent) to appear before the Commission at a hearing, at a time and place stated in the order, but not less than thirty days after the receipt of such order, and given evidence upon the matters specified in the order to show cause. However, if safety of life or property is involved, the order to show cause may specify a hearing date less than thirty days from the receipt of such order.

(c) To avail himself of such opportunity for hearing, the respondent, personally or by his attorney, shall file with the Commission, within thirty days of the service of the order or such shorter period as may be specified therein, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the order. The Commission in its discretion may accept a late appearance. However, an appearance tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petition for acceptance of late appearance will be granted only if the Commission determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(d) Hearings on the matters specified in such orders to show cause shall accord with the practice and procedure prescribed in this subpart and subpart B of this part, with the following exceptions: (1) In all such revocation and/or cease and desist hearings, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission; and (2) the Commission may specify in a show cause order, when the circumstances of the proceeding require expedition, a time less than that prescribed in §§ 1.276 and 1.277 within which the initial decision in the proceeding shall become effective, exceptions to such initial decision must be filed, parties must file requests for oral argument, and parties must file notice of intention to participate in oral argument.

(e) Correction of or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or a cease and desist order should be issued.

(f) Any order of revocation and/or cease and desist order issued after hearing pursuant to this section shall include a statement of findings and the grounds therefor, shall specify the effective date of the order, and shall be served on the person to whom such order is directed.

(Sec. 312, 48 Stat. 1086, as amended; 47 U.S.C. 312)

### § 1.92 Revocation and/or cease and desist proceedings; after waiver of hearing.

(a) After the issuance of an order to show cause, pursuant to § 1.91, calling upon a person to appear at a hearing before the Commission, the occurrence of any one of the following events or circumstances will constitute a waiver of such hearing and the proceeding thereafter will be conducted in accordance with the provisions of this section.

(1) The respondent fails to file a timely written appearance as prescribed in § 1.91(c) indicating that he will appear at a hearing and present evidence on the matters specified in the order.

(2) The respondent, having filed a timely written appearance as prescribed in § 1.91(c), fails in fact to appear in person or by his attorney at the time and place of the duly scheduled hearing.

(3) The respondent files with the Commission, within the time specified for a written appearance in § 1.91(c), a written statement expressly waiving his rights to a hearing.

(b) When a hearing is waived under the provisions of paragraph (a) (1) or (3) of this section, a written statement signed by the respondent denying or seeking to mitigate or justify the circumstances or conduct complained of in the order to show cause may be submitted within the time specified in

§ 1.91(c). The Commission in its discretion may accept a late statement. However, a statement tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petitions for acceptance of a late statement will be granted only if the Commission determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(c) Whenever a hearing is waived by the occurrence of any of the events or circumstances listed in paragraph (a) of this section, the Chief Administrative Law Judge (or the presiding officer if one has been designated) shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission. Such order shall be served upon the respondent.

(d) After a hearing proceeding has been terminated pursuant to paragraph (c) of this section, the Commission will act upon the matters specified in the order to show cause in the regular course of business. The Commission will determine on the basis of all the information available to it from any source, including such further proceedings as may be warranted, if a revocation order and/or a cease and desist order should issue, and if so, will issue such order. Otherwise, the Commission will issue an order dismissing the proceeding. All orders specified in this paragraph will include a statement of the findings of the Commission and the grounds and reasons therefor, will specify the effective date thereof, and will be served upon the respondent.

(e) Corrections or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or a cease and desist order should be issued.

(Sec. 312, 48 Stat. 1086, as amended; 47 U.S.C. 312)

[28 FR 12415, Nov. 22, 1963, as amended at 29 FR 6443, May 16, 1964; 37 FR 19372, Sept. 20, 1972]

### § 1.93 Consent orders.

(a) As used in this subpart, a ''consent order'' is a formal decree accepting an agreement between a party to an adjudicatory hearing proceeding held to determine whether that party has violated statutes or Commission rules or policies and the appropriate operating Bureau, with regard to such party's future compliance with such statutes, rules or policies, and disposing of all issues on which the proceeding was designated for hearing. The order is issued by the officer designated to preside at the hearing or (if no officer has been designated) by the Chief Administrative Law Judge.

(b) Where the interests of timely enforcement or compliance, the nature of the proceeding, and the public interest permit, the Commission, by its operating Bureaus, may negotiate a consent order with a party to secure future compliance with the law in exchange for prompt disposition of a matter subject to administrative adjudicative proceedings. Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license (see 47 U.S.C. 308 and 309).

[41 FR 14871, Apr. 8, 1976]

### § 1.94 Consent order procedures.

(a) Negotiations leading to a consent order may be initiated by the operating Bureau or by a party whose possible violations are issues in the proceeding. Negotiations may be initiated at any time after designation of a proceeding for hearing. If negotiations are initiated the presiding officer shall be notified. Parties shall be prepared at the initial prehearing conference to state whether they are at that time willing to enter negotiations. See § 1.248(c)(7). If either party is unwilling to enter negotiations, the hearing proceeding shall proceed. If the parties agree to enter negotiations, they will be afforded an appropriate opportunity to negotiate before the hearing is commenced.

(b) Other parties to the proceeding are entitled, but are not required, to participate in the negotiations, and may join in any agreement which is reached.

(c) Every agreement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) A waiver of the usual procedures for preparation and review of an initial decision;

(3) A waiver of the right of judicial review or otherwise to challenge or contest the validity of the consent order;

(4) A statement that the designation order may be used in construing the consent order;

(5) A statement that the agreement shall become a part of the record of the proceeding only if the consent order is signed by the presiding officer and the time for review has passed without rejection of the order by the Commission;

(6) A statement that the agreement is for purposes of settlement only and that its signing does not constitute an admission by any party of any violation of law, rules or policy (see 18 U.S.C. 6002); and

(7) A draft order for signature of the presiding officer resolving by consent, and for the future, all issues specified in the designation order.

(d) If agreement is reached, it shall be submitted to the presiding officer or Chief Administrative Law Judge, as the case may be, who shall either sign the order, reject the agreement, or suggest to the parties that negotiations continue on such portion of the agreement as he considers unsatisfactory or on matters not reached in the agreement. If he rejects the agreement, the hearing shall proceed. If he suggests further negotiations, the hearing will proceed or negotiations will continue, depending on the wishes of parties to the agreement. If he signs the consent order, he shall close the record.

(e) Any party to the proceeding who has not joined in any agreement which is reached may appeal the consent order under § 1.302, and the Commission may review the agreement on its own motion under the provisions of that section. If the Commission rejects the consent order, the proceeding will be remanded for further proceedings. If the Commission does not reject the consent order, it shall be entered in the record as a final order and is subject to judicial review on the initiative only of parties to the proceeding who did not join in the agreement. The Commission may revise the agreement and consent order. In that event, private parties to the agreement may either accept the revision or withdraw from the agreement. If the party whose possible violations are issues in the proceeding withdraws from the agreement, the consent order will not be issued or made a part of the record, and the proceeding will be remanded for further proceedings.

(f) The provisions of this section shall not alter any existing procedure for informal settlement of any matter prior to designation for hearing (see, e.g., 47 U.S.C. 208) or for summary decision after designation for hearing.

(g) Consent orders, pleadings relating thereto, and Commission orders with respect thereto shall be served on parties to the proceeding. Public notice will be given of orders issued by an administrative law judge, the Chief Administrative Law Judge, or the Commission. Negotiating papers constitute work product, are available to parties participating in negotiations, but are not routinely available for public inspection.

[41 FR 14871, Apr. 8, 1976]

### § 1.95 Violation of consent orders.

Violation of a consent order shall subject the consenting party to any and all sanctions which could have been imposed in the proceeding resulting in the consent order if all of the issues in that proceeding had been decided against the consenting party and to any further sanctions for violation noted as agreed upon in the consent order. The Commission shall have the burden of showing that the consent order has been violated in some (but not in every) respect. Violation of the consent order and the sanctions to be imposed shall be the only issues considered in a proceeding concerning such an alleged violation.

[41 FR 14871, Apr. 8, 1976]

RECONSIDERATION AND REVIEW OF ACTIONS TAKEN BY THE COMMISSION AND PURSUANT TO DELEGATED AUTHORITY; EFFECTIVE DATES AND FINALITY DATES OF ACTIONS

### § 1.101 General provisions.

Under section 5(c) of the Communications Act of 1934, as amended, the Commission is authorized, by rule or order, to delegate certain of its functions to a panel of commissioners, an individual commissioner, an employee board, or an individual employee. Section 0.201(a) of this chapter describes in general terms the basic categories of delegations which are made by the Commission. Subpart B of part 0 of this chapter sets forth all delegations which have been made by rule. Sections 1.102 through 1.120 set forth procedural rules governing reconsideration and review of actions taken pursuant to authority delegated under section 5(c) of the Communications Act, and reconsideration of actions taken by the Commission. As used in §§ 1.102 through 1.117, the term *designated authority* means any person, panel, or board which has been authorized by rule or order to exercise authority under section 5(c) of the Communications Act.

[28 FR 12415, Nov. 22, 1963, as amended at 62 FR 4170, Jan. 29, 1997]

### § 1.102 Effective dates of actions taken pursuant to delegated authority.

(a) *Final actions following review of an initial decision.* (1) Final decisions of a commissioner, or panel of commissioners following review of an initial decision shall be effective 40 days after public release of the full text of such final decision.

(2) If a petition for reconsideration of such final decision is filed, the effect of the decision is stayed until 40 days after release of the final order disposing of the petition.

(3) If an application for review of such final decision is filed, or if the Commission on its own motion orders the record of the proceeding before it for review, the effect of the decision is stayed until the Commission's review of the proceeding has been completed.

(b) *Non-hearing and interlocutory actions.* (1) Non-hearing or interlocutory actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action, or in the event such a document is not released, upon release of a public notice announcing the action in question.

(2) If a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration. Petitions for reconsideration of interlocutory actions will not be entertained.

(3) If an application for review of a non-hearing or interlocutory action is filed, or if the Commission reviews the action on its own motion, the Commission may in its discretion stay the effect of any such action until its review of the matters at issue has been completed.

[28 FR 12415, Nov. 22, 1963, as amended at 62 FR 4170, Jan. 29, 1997]

### § 1.103 Effective dates of Commission actions; finality of Commission actions.

(a) Unless otherwise specified by law or Commission rule (e.g. §§ 1.102 and 1.427), the effective date of any Commission action shall be the date of public notice of such action as that latter date is defined in § 1.4(b) of these rules: *Provided,* That the Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action. The designation of an earlier or later effective date shall have no effect on any pleading periods.

(b) Notwithstanding any determinations made under paragraph (a) of this section, Commission action shall be deemed final, for purposes of seeking reconsideration at the Commission or judicial review, on the date of public notice as defined in § 1.4(b) of these rules.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[46 FR 18556, Mar. 25, 1981]

### §1.104 Preserving the right of review; deferred consideration of application for review.

(a) The provisions of this section apply to all final actions taken pursuant to delegated authority, including final actions taken by members of the Commission's staff on nonhearing matters. They do not apply to interlocutory actions of the Chief Administrative Law Judge in hearing proceedings, or to hearing designation orders issued under delegated authority. See §§0.351, 1.106(a) and 1.115(e).

(b) Any person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or an application for review (but not both) within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. The petition for reconsideration will be acted on by the designated authority or referred by such authority to the Commission: *Provided,* That a petition for reconsideration of an order designating a matter for hearing will in all cases be referred to the Commission. The application for review will in all cases be acted upon by the Commission.

NOTE: In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

(c) If in any matter one party files a petition for reconsideration and a second party files an application for review, the Commission will withhold action on the application for review until final action has been taken on the petition for reconsideration.

(d) Any person who has filed a petition for reconsideration may file an application for review within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. If a petition for reconsideration has been filed, any person who has filed an application for review may: (1) Withdraw his application for review, or (2) substitute an amended application therefor.

NOTE: In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12415, Nov. 22, 1963, as amended at 41 FR 14871, Apr. 8, 1976; 44 FR 60294, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 62 FR 4170, Jan. 29, 1997]

### §1.106 Petitions for reconsideration.

(a)(1) Petitions requesting reconsideration of a final Commission action will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment rule making proceedings, see §1.429. This §1.106 does not govern reconsideration of such actions.)

(2) Within the period allowed for filing a petition for reconsideration, any party to the proceeding may request the presiding officer to certify to the Commission the question as to whether, on policy in effect at the time of designation or adopted since designation, and undisputed facts, a hearing should be held. If the presiding officer finds that there is substantial doubt, on established policy and undisputed facts, that a hearing should be held, he will certify the policy question to the Commission with a statement to that effect. No appeal may be filed from an order denying such a request. See also, §§1.229 and 1.251.

(b)(1) Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity

the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances is present:

(i) The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or

(ii) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

(3) A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.

(c) A petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts fall within one or more of the categories set forth in § 1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.

(d)(1) The petition shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. The petition shall state specifically the form or relief sought and, subject to this requirement, may contain alternative requests.

(2) The petition for reconsideration shall also, where appropriate, cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed. The petition may request that additional findings of fact and conclusions of law be made.

(e) Where a petition for reconsideration is based upon a claim of electrical interference, under appropriate rules in this chapter, to an existing station or a station for which a construction permit is outstanding, such petition, in addition to meeting the other requirements of this section, must be accompanied by an affidavit of a qualified radio engineer. Such affidavit shall show, either by following the procedures set forth in this chapter for determining interference in the absence of measurements, or by actual measurements made in accordance with the methods prescribed in this chapter, that electrical interference will be caused to the station within its normally protected contour.

(f) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules, and shall be served upon parties to the proceeding. The petition for reconsideration shall not exceed 25 double spaced typewritten pages. No supplement or addition to a petition for reconsideration which has not been acted upon by the Commission or by the designated authority, filed after expiration of the 30 day period, will be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor.

(g) Oppositions to a petition for reconsideration shall be filed within 10 days after the petition is filed, and shall be served upon petitioner and parties to the proceeding. Oppositions shall not exceed 25 double spaced typewritten pages.

(h) Petitioner may reply to oppositions within seven days after the last day for filing oppositions, and any such reply shall be served upon parties to the proceeding. Replies shall not exceed 10 double spaced typewritten pages, and shall be limited to matters raised in the opposition.

(i) Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52 and shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C., 20554.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny the petition. Its order will contain a concise statement of the reasons for the action taken. Where the petition for reconsideration relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.

(k)(1) If the Commission or the designated authority grants the petition for reconsideration in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which reconsideration is sought;

(ii) Remand the matter to a bureau or other Commission personnel for such further proceedings, including rehearing, as may be appropriate; or

(iii) Order such other proceedings as may be necessary or appropriate.

(2) If the Commission or designated authority initiates further proceedings, a ruling on the merits of the matter will be deferred pending completion of such proceedings. Following completion of such further proceedings, the Commission or designated authority may affirm, reverse, or modify its original order, or it may set aside the order and remand the matter for such further proceedings, including rehearing, as may be appropriate.

(3) Any order disposing of a petition for reconsideration which reverses or modifies the original order is subject to the same provisions with respect to reconsideration as the original order. In no event, however, shall a ruling which denies a petition for reconsideration be considered a modification of the original order. A petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious.

NOTE: For purposes of this section, the word ''order'' refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the ''memorandum opinion'' or other material which often accompany and explain the order.

(l) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or the designated authority believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(m) The filing of a petition for reconsideration is not a condition precedent to judicial review of any action taken by the Commission or by the designated authority, except where the person seeking such review was not a party to the proceeding resulting in the action, or relies on questions of fact or law upon which the Commission or designated authority has been afforded no opportunity to pass. (See §1.115(c).) Persons in those categories who meet the requirements of this section may qualify to seek judicial review by filing a petition for reconsideration.

(n) Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof. However, upon good cause shown, the Commission will stay the effectiveness of its order or requirement pending a decision on the petition for reconsideration. (This paragraph applies only to actions of the Commission en banc. For provisions applicable to actions under delegated authority, see §1.102.)

(Secs. 4, 303, 307, 405, 48 Stat., as amended, 1066, 1082, 1083, 1095; 47 U.S.C. 154, 303, 307, 405)

[28 FR 12415, Nov. 22, 1963, as amended at 37 FR 7507, Apr. 15, 1972; 41 FR 1287, Jan. 7, 1976; 44 FR 60294, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 62 FR 4170, Jan. 29, 1997]

### §1.108 Reconsideration on Commission's own motion.

The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12415, Nov. 22, 1963, as amended at 46 FR 18556, Mar. 25, 1981]

### § 1.110 Partial grants; rejection and designation for hearing.

Where the Commission without a hearing grants any application in part, or with any privileges, terms, or conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing.

### § 1.113 Action modified or set aside by person, panel, or board.

(a) Within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion.

(b) Within 60 days after notice of any sanction imposed under delegated authority has been served on the person affected, the person, panel, or board which imposed the sanction may modify or set it aside on its own motion.

(c) Petitions for reconsideration and applications for review shall be directed to the actions as thus modified, and the time for filing such pleadings shall be computed from the date upon which public notice of the modified action is given or notice of the modified sanction is served on the person affected.

### § 1.115 Application for review of action taken pursuant to delegated authority.

(a) Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission. Any person filing an application for review who has not previously participated in the proceeding shall include with his application a statement describing with particularity the manner in which he is aggrieved by the action taken and showing good reason why it was not possible for him to participate in the earlier stages of the proceeding. Any application for review which fails to make an adequate showing in this respect will be dismissed.

(b)(1) The application for review shall concisely and plainly state the questions presented for review with reference, where appropriate, to the findings of fact or conclusions of law.

(2) Except as provided in paragraph (b)(5) of this section, the application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented:

(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.

(ii) The action involves a question of law or policy which has not previously been resolved by the Commission.

(iii) The action involves application of a precedent or policy which should be overturned or revised.

(iv) An erroneous finding as to an important or material question of fact.

(v) Prejudicial procedural error.

(3) The application for review shall state with particularity the respects in which the action taken by the designated authority should be changed.

(4) The application for review shall state the form of relief sought and, subject to this requirement, may contain alternative requests.

(c) No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.

NOTE: Subject to the requirements of § 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration.

(d) Except as provided in paragraph (e) of this section, the application for review and any supplemental thereto shall be filed within 30 days of public

notice of such action, as that date is defined in section 1.4(b). Opposition to the application shall be filed within 15 days after the application for review is filed. Except as provided in paragraph (e)(3) of this section, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition.

(e)(1) Applications for review of interlocutory rulings made by the Chief Administrative Law Judge (see § 0.351) shall be deferred until the time when exceptions are filed unless the Chief Judge certifies the matter to the Commission for review. A matter shall be certified to the Commission only if the Chief Judge determines that it presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception. The request to certify the matter to the Commission shall be filed within 5 days after the ruling is made. The applicaton for review shall be filed within 5 days after the order certifying the matter to the Commission is released or such ruling is made. Oppositions shall be filed within 5 days after the application is filed. Replies to oppositions shall be filed only if they are requested by the Commission. Replies (if allowed) shall be filed within 5 days after they are requested. A ruling certifying or not certifying a matter to the Commission is final: *Provided, however,* That the Commission may, on its own motion, dismiss the application for review on the ground that objections to the ruling should be deferred and raised as an exception.

(2) The failure to file an application for review of an interlocutory ruling made by the Chief Administrative Law Judge or the denial of such application by the Commission, shall not preclude any party entitled to file exceptions to the initial decision from requesting review of the ruling at the time when exceptions are filed. Such requests will be considered in the same manner as exceptions are considered.

(3) Applications for review of a hearing designation order issued under delegated authority shall be deferred until exceptions to the initial decision in the case are filed, unless the presiding Administrative Law Judge certifies such an application for review to the Commission. A matter shall be certified to the Commission only if the presiding Administrative Law Judge determines that the matter involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate consideration of the question would materially expedite the ultimate resolution of the litigation. A ruling refusing to certify a matter to the Commission is not appealable. In addition, the Commission may dismiss, without stating reasons, an application for review that has been certified, and direct that the objections to the hearing designation order be deferred and raised when exceptions in the initial decision in the case are filed. A request to certify a matter to the Commission shall be filed with the presiding Administrative Law Judge within 5 days after the designation order is released. Any application for review authorized by the Administrative Law Judge shall be filed within 5 days after the order certifying the matter to the Commission is released or such a ruling is made. Oppositions shall be filed within 5 days after the application for review is filed. Replies to oppositions shall be filed only if they are requested by the Commission. Replies (if allowed) shall be filed within 5 days after they are requested.

(f) Applications for review, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554. Except as provided below, applications for review and oppositions thereto shall not exceed 25 double-space typewritten pages. Applications for review of interlocutory actions in hearing proceedings (including designation orders) and oppositions thereto shall not exceed 5 double-spaced typewritten pages. When permitted (see paragraph (e)(3) of this section), reply pleadings shall not exceed 5 double-spaced typewritten pages. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and on parties to the

proceeding. When permitted (see paragraph (e)(3) of this section), replies to the opposition(s) to the application for review shall be served on the person(s) opposing the application for review and on parties to the proceeding.

(g) The Commission may grant the application for review in whole or in part, or it may deny the application with or without specifying reasons therefor. A petition requesting reconsideration of a ruling which denies an application for review will be entertained only if one or more of the following circumstances is present:

(1) The petition relies on facts which related to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or

(2) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

(h)(1) If the Commission grants the application for review in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which review is sought;

(ii) Remand the matter to the designated authority for reconsideration in accordance with its instructions, and, if an evidentiary hearing has been held, the remand may be to the person(s) who conducted the hearing; or

(iii) Order such other proceedings, including briefs and oral argument, as may be necessary or appropriate.

(2) In the event the Commission orders further proceedings, it may stay the effect of the order from which review is sought. (See § 1.102.) Following the completion of such further proceedings the Commission may affirm, reverse or modify the order from which review is sought, or it may set aside the order and remand the matter to the designated authority for reconsideration in accordance with its instructions. If an evidentiary hearing has been held, the Commission may remand the matter to the person(s) who conducted the hearing for rehearing on such issues and in accordance with such instructions as may be appropriate.

NOTE: For purposes of this section, the word ''order'' refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the ''memorandum opinion'' or other material which often accompany and explain the order.

(i) An order of the Commission which reverses or modifies the action taken pursuant to delegated authority is subject to the same provisions with respect to reconsideration as an original order of the Commission. In no event, however, shall a ruling which denies an application for review be considered a modification of the action taken pursuant to delegated authority.

(j) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(k) The filing of an application for review shall be a condition precedent to judicial review of any action taken pursuant to delegated authority.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12415, Nov. 22, 1963, as amended at 41 FR 14871, Apr. 8, 1976; 44 FR 60295, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 48 FR 12719, Mar. 28, 1983; 50 FR 39000, Sept. 26, 1985; 54 FR 40392, Oct. 2, 1989; 55 FR 36641, Sept. 6, 1990; 57 FR 19387, May 6, 1992; 62 FR 4170, Jan. 29, 1997]

### § 1.117 Review on motion of the Commission.

(a) Within 40 days after public notice is given of any action taken pursuant to delegated authority, the Commission may on its own motion order the record of the proceeding before it for review.

(b) If the Commission reviews the proceeding on its own motion, it may order such further procedure as may be useful to it in its review of the action taken pursuant to delegated authority.

(c) With or without such further procedure, the Commission may either affirm, reverse, modify, or set aside the action taken, or remand the proceeding to the designated authority for reconsideration in accordance with its instructions. If an evidentiary hearing

has been held, the Commission may remand the proceeding to the person(s) who conducted the hearing for rehearing on such issues and in accordance with such instructions as may be appropriate. An order of the Commission which reverses or modifies the action taken pursuant to delegated authority, or remands the matter for further proceedings, is subject to the same provisions with respect to reconsideration as an original action of the Commission.

**§1.120 Protests of grants without hearing.**

(a) The provisions of this section shall not be applicable to any application: (1) Filed on or after December 12, 1960; (2) filed before December 12, 1960, but substantially amended (as defined in the applicable provisions of this chapter) on or after that date; or (3) filed before December 12, 1960, and not thereafter substantially amended, but with respect to which the rules in this chapter provide an opportunity for petitions to deny to be filed under section 309 of the Communications Act, as amended. See §§1.580 and 1.962.

(b) Where any instrument of authorization for a radio station, other than a license pursuant to a construction permit, has been granted without a hearing, any party in interest may file a protest directed to such grant and request a hearing on the application granted. Such protest shall be signed by the protestant and subscribed to under oath. Such protest must be filed with the Commission within 30 days after release of the document containing the full text of such action, or in case such a document is not released, after release of a ''Public Notice'' announcing the action in question and must separately set forth:

(1) Such allegations of fact as will show the protestant to be a party in interest, i.e., a person aggrieved or whose interests are adversely affected by the Commission's authorization, protest of which is sought. Each such allegation of fact shall be separately stated.

(2) Facts indicating the reasons why the grant was improperly made or would otherwise not be in the public interest. Each such reason shall be separately stated, and facts in support thereof shall be specified in detail and shall not include general non-specific conclusory arguments and allegations.

(3) The specific issues upon which protestant wishes a hearing to be held, which issues must relate directly to a matter specified with particularity as part of paragraph (b)(2) of this section.

(c) Arguments and citations of authority may be set forth in a brief accompanying the protest but must be excluded from the protest itself.

(d) Oppositions to protests and briefs in support thereof shall contain all material, including that pertinent to the determination referred to in paragraph (i) of this section, deemed appropriate to the Commission's resolution of the protest. Such oppositions and supporting briefs must be filed within 10 days after the filing of such protest, and any replies to such oppositions must be filed within 5 days after the filing of the oppositions.

(e) Protests, oppositions, and replies shall be filed with the Commission in original and 14 copies and shall be accompanied by proof of service upon the grantee or the protestant, as the case may be, and/or their respective attorneys.

(f) The Commission may upon consideration of a protest direct either the protestant or grantee or both to submit further statements of fact under oath relating to the matters raised in the protest.

(g) Within 30 days from the date of the filing of the protest, the Commission will enter findings as to whether such protest meets the requirements set forth in paragraphs (b) (1) and (2) of this section. If the Commission finds that one of these requirements is not met, it will dismiss the protest. If the Commission finds that these requirements are met, it will designate the application in question for hearing. As to issues which the Commission believes present no grounds for setting aside the grant, even if the facts alleged were to be proven, the Commission may designate such issues for oral argument only. The other issues will be designated for evidentiary hearing except that the Commission may redraft the issues in accordance with the facts or

substantive matters alleged in the protest and may also specify such additional issues as it deems desirable. In any evidentiary hearing subsequently held upon issues specified by the Commission, upon its own initiative or adopted by it, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the grantee. With respect to issues resulting from facts set forth in the protest and not adopted or specified by the Commission on its own motion, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the protestant.

(h) The procedure in such protest hearing shall be governed by the provisions of subpart B of this part, except as otherwise provided in this section.

(i) Pending hearing and decision, the effective date of the Commission's action to which protest is made shall be postponed to the effective date of the Commission's decision after hearing, unless the authorization involved is necessary to the maintenance or conduct of an existing service or unless the Commission affirmatively finds that the public interest requires that the grant remain in effect, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing.

(Sec. 7, 66 Stat. 715, as amended. See, in particular, sec. 4 (a) and (d), 74 Stat. 889, 892; 47 U.S.C. 309)

[28 FR 12415, Nov. 22, 1963, as amended at 28 FR 14503, Dec. 31, 1963]

## Subpart B—Hearing Proceedings

SOURCE: 28 FR 12425, Nov. 22, 1963, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart B appear at 37 FR 19372, Sept. 20, 1972.

GENERAL

### § 1.201 Scope.

This subpart shall be applicable to the following cases which have been designated for hearing:

(a) Adjudication (as defined by the Administrative Procedure Act); and

(b) Rule making proceedings which are required by law to be made on the record after opportunity for a Commission hearing.

NOTE: For special provisions relating to AM broadcast station applications involving other North American countries see § 73.3570.

[28 FR 12425, Nov. 22, 1963, as amended at 51 FR 32088, Sept. 9, 1986]

### § 1.202 Official reporter; transcript.

The Commission will designate from time to time an official reporter for the recording and transcribing of hearing proceedings. The transcript of the testimony taken, or argument had, at any hearing will not be furnished by the Commission, but will be open to inspection under § 0.453(a)(1) of this chapter. Copies of such transcript, if desired, may be obtained from the official reporter upon payment of the charges therefor.

(5 U.S.C. 556)

[32 FR 20861, Dec. 28, 1967]

### § 1.203 The record.

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. Where any decision rests on official notice of a material fact not appearing in the record, any party shall on timely request be afforded an opportunity to show the contrary.

(5 U.S.C. 556)

### § 1.204 Pleadings; definition.

As used in this subpart, the term *pleading* means any written notice, motion, petition, request, opposition, reply, brief, proposed findings, exceptions, memorandum of law, or other paper filed with the Commission in a hearing proceeding. It does not include exhibits or documents offered in evidence. See § 1.356.

[29 FR 8219, June 30, 1964]

### § 1.205 Continuances and extensions.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time may be granted

by the Commission or the presiding officer upon motion for good cause shown, unless the time for performance or filing is limited by statute.

### §1.207 Interlocutory matters, reconsideration and review; cross references.

(a) Rules governing interlocutory pleadings in hearing proceedings are set forth in §§1.291 through 1.298.

(b) Rules governing appeal from rulings made by the presiding officer are set forth as §§1.301 and 1.302.

(c) Rules governing the reconsideration and review of actions taken pursuant to delegated authority, and the reconsideration of actions taken by the Commission, are set forth in §§1.101 through 1.120.

[28 FR 12425, Nov. 22, 1963, as amended at 29 FR 6443, May 16, 1964; 36 FR 19439, Oct. 6, 1971]

### §1.209 Identification of responsible officer in caption to pleading.

Each pleading filed in a hearing proceeding shall indicate in its caption whether it is to be acted upon by the Commission, the Chief Administrative Law Judge, or the presiding officer. If it is to be acted upon by the presiding officer, he shall be identified by name.

[29 FR 8219, June 30, 1964, as amended at 37 FR 19372, Sept. 20, 1972; 62 FR 4171, Jan. 29, 1997]

### §1.211 Service.

Except as otherwise expressly provided in this chapter, all pleadings filed in a hearing proceeding shall be served upon all other counsel in the proceeding or, if a party is not represented by counsel, then upon such party. All such papers shall be accompanied by proof of service. For provisions governing the manner of service, see §1.47.

[29 FR 8219, June 30, 1964]

PARTICIPANTS AND ISSUES

### §1.221 Notice of hearing; appearances.

(a) Upon designation of an application for hearing, the Commission issues an order containing the following:

(1) A statement as to the reasons for the Commission's action.

(2) A statement as to the matters of fact and law involved, and the issues upon which the application will be heard.

(3) A statement as to the time, place, and nature of the hearing. (If the time and place are not specified, the order will indicate that the time and place will be specified at a later date.)

(4) A statement as to the legal authority and jurisdiction under which the hearing is to be held.

(b) The order designating an application for hearing is mailed to the applicant by the Secretary of the Commission and this order or a summary thereof is published in the FEDERAL REGISTER. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

(c) In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall, within 20 days of the mailing of the notice of designation for hearing by the Secretary, file with the Commission, in triplicate, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified in the order. Where an applicant fails to file such a written appearance within the time specified, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute.

(d) The Commission will on its own motion name as parties to the hearing any person found to be a party in interest.

(e) In order to avail himself of the opportunity to be heard, any person named as a party pursuant to paragraph (d) of this section shall, within 20 days of the mailing of the notice of his designation as a party, file with the Commission, in person or by attorney, a written appearance in triplicate, stating that he will appear at the hearing. Any person so named who fails to file this written statement within the time specified, shall, unless good cause for such failure is shown, forfeit his hearing rights.

(f) A fee must accompany each written appearance filed with the Commission in certain cases designated for hearing. See subpart G, part 1 for the amount due. Except as provided in paragraph (g) of this section, the fee must accompany each written appearance at the time of its filing and must be in conformance with the requirements of subpart G of the rules. A written appearance that does not contain the proper fee, or is not accompanied by a deferral request as per § 1.1115 of the rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day filing period.

NOTE: If the parties file a settlement agreement prior to filing the Notice of Appearance or simultaneously with it, the hearing fee need not accompany the Notice of Appearance. In filing the Notice of Appearance, the applicant should clearly indicate that a settlement agreement has been filed. (The fact that there are ongoing negotiations that may lead to a settlement does not affect the requirement to pay the fee.) If a settlement agreement is not effectuated, the Presiding Judge will require immediate payment of the fee.

(g) In comparative broadcast proceedings involving applicants for new facilities, where the hearing fee was paid before designation of the applications for hearing as required by the Public Notice described at § 73.3571(c), § 73.3572(d), or § 73.3573(g) of this chapter, a hearing fee payment should not be made with the filing of the Notice of Appearance.

(5 U.S.C. 554. Sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309)

[28 12424, Nov. 22, 1963, as amended at 51 FR 19347, May 29, 1986; 52 FR 5288, Feb. 20, 1987; 55 FR 19154, May 8, 1990; 56 FR 25638, June 5, 1991]

### § 1.223 Petitions to intervene.

(a) Where, in cases involving applications for construction permits and station licenses, or modifications or renewals thereof, the Commission has failed to notify and name as a party to the hearing any person who qualifies as a party in interest, such person may acquire the status of a party by filing, under oath and not more than 30 days after the publication in the FEDERAL REGISTER of the hearing issues or any substantial amendment thereto, a petition for intervention showing the basis of its interest. Where such person's interest is based upon a claim that a grant of the application would cause objectionable interference under applicable provisions of this chapter to such person as a licensee or permittee of an existing or authorized station, the petition to intervene must be accompanied by an affidavit of a qualified radio engineer which shall show, either by following the procedures prescribed in this chapter for determining interference in the absence of measurements or by actual measurements made in accordance with the methods prescribed in this chapter, the extent of such interference. Where the person's status as a party in interest is established, the petition to intervene will be granted.

(b) Any other person desiring to participate as a party in any hearing may file a petition for leave to intervene not later than 30 days after the publication in the FEDERAL REGISTER of the full text or a summary of the order designating an application for hearing or any substantial amendment thereto. The petition must set forth the interest of petitioner in the proceedings, must show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition. The presiding officer, in his discretion, may grant or deny such petition or may permit intervention by such persons limited to a particular stage of the proceeding.

(c) Any person desiring to file a petition for leave to intervene later than 30 days after the publication in the FEDERAL REGISTER of the full text or a summary of the order designating an application for hearing or any substantial amendment thereto shall set forth the interest of petitioner in the proceeding, show how such petitioner's

participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must set forth reasons why it was not possible to file a petition within the time prescribed by paragraphs (a) and (b) of this section. Such petition shall be accompanied by the affidavit of a person with knowledge of the facts set forth in the petition, and where petitioner claims that a grant of the application would cause objectionable interference under applicable provisions of this chapter, the petition to intervene must be accompanied by the affidavit of a qualified radio engineer showing the extent of such alleged interference according to the methods prescribed in paragraph (a) of this section. If, in the opinion of the presiding officer, good cause is shown for the delay in filing, he may in his discretion grant such petition or may permit intervention limited to particular issues or to a particular stage of the proceeding.

(Sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309)

[28 FR 12425, Nov. 22, 1963, as amended at 29 FR 7821, June 19, 1964; 41 FR 14872, Apr. 8, 1976; 51 FR 19347, May 29, 1986]

### §1.224 Motion to proceed in forma pauperis.

(a) A motion to proceed in forma pauperis may be filed by an individual, a corporation, and unincorporated entity, an association or other similar group, if the moving party is either of the following:

(1) A respondent in a revocation proceeding, or a renewal applicant, who cannot carry on his livelihood without the radio license at stake in the proceeding; or

(2) An intervenor in a hearing proceeding who is in a position to introduce testimony which is of probable decisional significance, on a matter of substantial public interest importance, which cannot, or apparently will not, be introduced by other parties to the proceeding, and who is not seeking personal financial gain.

(b) In the case of a licensee, the motion to proceed in forma pauperis shall contain specific allegations of fact sufficient to show that the moving party is eligible under paragraph (a) of this section and that he cannot, because of his poverty, pay the expenses of litigation and still be able to provide himself and his dependents with the necessities of life. Such allegations of fact shall be supported by affidavit of a person or persons with personal knowledge thereof. The information submitted shall detail the income and assets of the individual and his financial obligations and responsibilities, and shall contain an estimate of the cost of participation in the proceeding. Personal financial information may be submitted to the presiding officer in confidence.

(c)(1) In the case of an individual intervenor, the motion to proceed in forma pauperis shall contain specific allegations of fact sufficient to show that he is eligible under paragraph (a) of this section and that he has dedicated financial resources to sustain his participation which are reasonable in light of his personal resources and other demands upon them but are inadequate for effective participation in the proceeding. Such allegations of fact shall be supported by affidavit of a person or persons with personal knowledge thereof. The information submitted shall detail the income and assets of the individual and his immediate family and his financial obligations and responsibilities, and shall contain an estimate of the cost of participation. Personal financial information may be submitted to the presiding officer in confidence.

(2) In the case of an intervening group, the motion to proceed in forma pauperis shall contain specific allegations of fact sufficient to show that the moving party is eligible under paragraph (a) of this section and that it cannot pay the expenses of litigation and still be able to carry out the activities and purposes for which it was organized. Such allegations of fact shall be supported by affidavit of the President and Treasurer of the group, and/or by other persons having personal knowledge thereof. The information submitted shall include a copy of the corporate charter or other documents that describe the activities and purposes of the organization; a current

balance sheet and profit and loss statement; facts showing, under all the circumstances, that it would not be reasonable to expect added resources of individuals composing the group to be pooled to meet the expenses of participating in the proceeding; and an estimate of the cost of participation. Personal financial information pertaining to members of the group may be submitted to the presiding officer in confidence.

(d) If the motion is granted, the presiding officer may direct that a free copy of the transcript of testimony be made available to the moving party and may relax the rules of procedure in any manner which will ease his financial burden, is fair to other parties to the proceeding, and does not involve the payment of appropriated funds to a party.

[41 FR 53021, Dec. 3, 1976]

### § 1.225 Participation by non-parties; consideration of communications.

(a) Any person who wishes to appear and give evidence on any matter and who so advises the Secretary, will be notified by the Secretary if that matter is designated for hearing. In the case of requests bearing more than one signature, notice of hearing will be given to the person first signing unless the request indicates that such notice should be sent to someone other than such person.

(b) No person shall be precluded from giving any relevant, material, and competent testimony at a hearing because he lacks a sufficient interest to justify his intervention as a party in the matter.

(c) When a hearing is held, no communication will be considered in determining the merits of any matter unless it has been received into evidence. The admissibility of any communication shall be governed by the applicable rules of evidence, and no communication shall be admissible on the basis of a stipulation unless Commission counsel as well as counsel for all of the parties shall join in such stipulation.

### § 1.227 Consolidations.

(a) The Commission, upon motion or upon its own motion, will, where such action will best conduce to the proper dispatch of business and to the ends of justice, consolidate for hearing:

(1) Any cases which involve the same applicant or involve substantially the same issues, or

(2) Any applications which present conflicting claims, except where a random selection process is used.

(b)(1) In broadcast cases, except as provided in paragraph (b)(5) of this section, and except as otherwise provided in § 1.1601, *et seq.*, no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended, if amended so as to require a new file number, is substantially complete and tendered for filing by the close of business on the day preceding the day designated by Public Notice as the day any one of the previously filed applications is available and ready for processing.

(2) In other than broadcast, common carrier, and safety and special radio services cases, any application that is mutually exclusive with another application or applications already designated for hearing will be consolidated for hearing with such other application or applications only if the later application in question has been filed within 5 days after public notice has been given in the FEDERAL REGISTER of the Commission's order which first designated for hearing the prior application or applications with which such application is in conflict.

(3) Common carrier cases: (i) *General rule.* Where an application is mutually exclusive with a previously filed application, the second application will be entitled to comparative consideration with the first or entitled to be included in a random selection process, only if the second has been properly filed at least one day before the Commission takes action on the first application. Specifically, the later filed application must have been received by the Commission, in a condition acceptable for filing, before the close of business on the day prior to the grant date or designation date of the earlier filed application.

(ii) *Domestic public fixed and public mobile.* See Rule §§ 21.31 and 22.31 for the requirements as to mutually exclusive applications. See also Rule §§ 21.23 and

22.23 for the requirements as to amendments of applications.

(iii) *Public coast stations (Maritime mobile service).* See paragraph (b)(4) of this section.

(4) This paragraph applies when mutually-exclusive applications subject to section 309(b) of the Communications Act are filed in the Private Radio Services or when there are more such applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (see § 1.972 of this part). An application which is substantially amended (as defined by § 1.962(c) of this part) will, for the purpose of this section, be considered to be a newly-filed application as of the receipt date of the amendment. Except for applications filed under part 94, Private Operational Fixed Microwave Service, mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at part 1, subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day.

(5) Any mutually exclusive application filed after the date prescribed in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket.

(6) An application which is mutually exclusive with an application for renewal of license of a broadcast station filed on or before May 1, 1995 will be designated for comparative hearing with such license renewal application if it is substantially complete and tendered for filing no later than the date prescribed in § 73.3516(e).

[28 FR 12425, Nov. 22, 1963, as amended at 34 FR 7966, May 21, 1969; 37 FR 13983, July 15, 1972; 38 FR 26202, Sept. 19, 1973; 48 FR 27200, June 13, 1983; 48 FR 34039, July 27, 1983; 52 FR 10229, Mar. 31, 1987; 55 FR 46008, Oct. 31, 1990; 55 FR 46513, Nov. 5, 1990; 61 FR 18291, Apr. 25, 1996]

### § 1.229 Motions to enlarge, change, or delete issues.

(a) A motion to enlarge, change or delete the issues may be filed by any party to a hearing. Except as provided for in paragraph (b) of this section, such motions must be filed within 15 days after the full text or a summary of the order designating the case for hearing has been published in the FEDERAL REGISTER.

(b)(1) In comparative broadcast proceedings involving applicants for only new facilities, such motions shall be filed within 30 days of the release of the designation order, except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER. (*See* § 1.223 of this part).

(2) In comparative broadcast proceedings involving renewal applicants, such motions shall be filed within 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER.

(3) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), and (b)(2), of this section, shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

(c) In the absence of good cause for late filing of a motion to modify the issues, the motion to enlarge will be considered fully on its merits if (and only

if) initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing.

(d) Such motions, opposition thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

(e) In comparative broadcast proceedings involving applicants for only new facilities, in addition to the showing with respect to the requested issue modification described in paragraph (d) of this section, the party requesting the enlargement of issues against an applicant in the proceeding shall identify those documents the moving party wishes to have produced and any other discovery procedures the moving party wishes to employ in the event the requested issue is added to the proceeding.

(1) In the event the motion to enlarge issues is granted, the Commission or delegated authority acting on the motion will also rule on the additional discovery requests, and, if granted, such additional discovery will be scheduled to be completed within 30 days of the action on the motion.

(2) The moving party may file supplemental discovery requests on the basis of information provided in responsive pleadings or discovered as a result of initial discovery on the enlarged issue. The grant or denial of any such supplemental requests and the timing of the completion of such supplemental discovery are subject to the discretion of the presiding judge.

(3) The 30-day time limit for completion of discovery on enlarged issues shall not apply where the persons subject to such additional discovery are not parties to the proceeding. In such case, additional time will be required to afford such persons adequate notice of the discovery procedures being employed.

(f) In any case in which the presiding judge or the Commission grants a motion to enlarge the issues to inquire into allegations that an applicant made misrepresentations to the Commission or engaged in other misconduct during the application process, the enlarged issues include notice that, after hearings on the enlarged issue and upon a finding that the alleged misconduct occurred and warrants such penalty, in addition to or in lieu of denying the application, the applicant may be liable for a forfeiture of up to the maximum statutory amount. See 47 U.S.C. 503(b)(2)(A).

[41 FR 14872, Apr. 8, 1976, as amended at 44 FR 34947, June 18, 1979; 51 FR 19347, May 29, 1986; 56 FR 792, Jan. 9, 1991; 56 FR 25639, June 5, 1991; 62 FR 4171, Jan. 29, 1997]

PRESIDING OFFICER

### § 1.241 Designation of presiding officer.

(a) Hearings will be conducted by the Commission, by one or more commissioners, or by a law judge designated pursuant to section 11 of the Administrative Procedure Act. If a presiding officer becomes unavailable to the Commission prior to the taking of testimony another presiding officer will be designated.

(b) Unless the Commission determines that due and timely execution of its functions requires otherwise, presiding officers shall be designated, and notice thereof released to the public, at least 10 days prior to the date set for hearing.

(5 U.S.C. 556)

### § 1.243 Authority of presiding officer.

From the time he is designated to preside until issuance of his decision or the transfer of the proceeding to the Commission or to another presiding officer the presiding officer shall have such authority as is vested in him by law and by the provisions of this chapter, including authority to:

(a) Administer oaths and affirmations;

(b) Issue subpenas;

(c) Examine witnesses;

(d) Rule upon questions of evidence;

(e) Take or cause depositions to be taken;

(f) Regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings;

(g) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law upon which he is required to rule during the course of the hearing;

(h) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(i) Dispose of procedural requests or similar matters, as provided for in §0.341 of this chapter;

(j) Take actions and make decisions in conformity with the Administrative Procedure Act;

(k) Act on motions to enlarge, modify or delete the hearing issues; and

(l) Act on motions to proceed in forma pauperis pursuant to §1.224.

(5 U.S.C. 556)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 53022, Dec. 3, 1976]

### §1.244 Designation of a settlement judge.

(a) In broadcast comparative cases involving applicants for only new facilities, the applicants may request the appointment of a settlement judge to facilitate the resolution of the case by settlement.

(b) Where all applicants in the case agree that such procedures may be beneficial, such requests may be filed with the presiding judge no later than 15 days prior to the date scheduled by the presiding judge for the commencement of hearings. The presiding judge shall suspend the procedural dates in the case and forward the request to the Chief Administrative Law Judge for action.

(c) If, in the discretion of the Chief Administrative Law Judge, it appears that the appointment of a settlement judge will facilitate the settlement of the case, the Chief Judge will appoint a ''neutral'' as defined in 5 U.S.C. 581 and 583(a) to act as the settlement judge.

(1) The parties may request the appointment of a settlement judge of their own choosing so long as that person is a ''neutral'' as defined in 5 U.S.C. 581.

(2) The appointment of a settlement judge in a particular case is subject to the approval of all the applicants in the proceeding. See 5 U.S.C. 583(b).

(3) The Commission's Administrative Law Judges are eligible to act as settlement judges, except that an Administrative Law Judge will not be appointed as a settlement judge in any case in which the Administrative Law Judge also acts as the presiding officer.

(4) Other members of the Commission's staff who qualify as neutrals may be appointed as settlement judges, except that staff members whose duties include drafting, review, and/or recommendations in adjudicatory matters pending before the Commission shall not be appointed as settlement judges.

(d) The settlement judge shall have the authority to require applicants to submit their Standardized Integration Statements and/or their written direct cases for review. The settlement judge may also meet with the applicants and/or their counsel, individually and/or at joint conferences, to discuss their cases and the cases of their competitors. All such meetings will be off-the-record, and the settlement judge may express an opinion as to the relative comparative standing of the applicants and recommend possible means to resolve the proceeding by settlement. The proceedings before the settlement judge shall be subject to the confidentiality provisions of 5 U.S.C. 574. Moreover, no statements, offers of settlement, representations or concessions of the parties or opinions expressed by the settlement judge will be admissible as evidence in any Commission licensing proceeding.

[56 FR 793, Jan. 9, 1991, as amended at 62 FR 4171, Jan. 29, 1997]

### §1.245 Disqualification of presiding officer.

(a) In the event that a presiding officer deems himself disqualified and desires to withdraw from the case, he shall notify the Commission of his withdrawal at least 7 days prior to the date set for hearing.

(b) Any party may request the presiding officer to withdraw on the grounds

of personal bias or other disqualification.

(1) The person seeking disqualification shall file with the presiding officer an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. Such affidavit shall be filed not later than 5 days before the commencement of the hearing unless, for good cause shown, additional time is necessary.

(2) The presiding officer may file a response to the affidavit; and if he believes himself not disqualified, shall so rule and proceed with the hearing.

(3) The person seeking disqualification may appeal a ruling of disqualification, and, in that event, shall do so at the time the ruling is made. Unless an appeal of the ruling is filed at this time, the right to request withdrawal of the presiding officer shall be deemed waived.

(4) If an appeal of the ruling is filed, the presiding officer shall certify the question, together with the affidavit and any response filed in connection therewith, to the Commission. The hearing shall be suspended pending a ruling on the question by the Commission.

(5) The Commission may rule on the question without hearing, or it may require testimony or argument on the issues raised.

(6) The affidavit, response, testimony or argument thereon, and the Commission's decision shall be part of the record in the case.

(5 U.S.C. 556)

[28 FR 12425, Nov. 22, 1963, as amended at 55 FR 36641, Sept. 6, 1990; 62 FR 4171, Jan. 29, 1997]

PREHEARING PROCEDURES

### § 1.246 Admission of facts and genuineness of documents.

(a) Within 20 days after the time for filing a notice of appearance has expired; or within 20 days after the release of an order adding parties to the proceeding (see §§ 1.223 and 1.227) or changing the issues (see § 1.229); or within such shorter or longer time as the presiding officer may allow on motion or notice, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents identified in and exhibited by a clear copy with the request or of the truth of any relevant matters of fact set forth in the request.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof, or within such shorter or longer time as the presiding officer may allow on motion or notice, the party to whom the request is directed serves upon the party requesting the admission either: (1) A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

(c) A copy of the request and of any answer shall be served by the party filing on all other parties to the proceeding and upon the presiding officer.

(d) Written objections to the requested admissions may be ruled upon by the presiding officer without additional pleadings.

[33 FR 463, Jan. 12, 1968, as amended at 35 FR 17333, Nov. 11, 1970]

### § 1.248 Prehearing conferences; hearing conferences.

(a) The Commission, on its own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to a hearing, or to submit suggestions in writing, for the purpose of considering, among other things, the matters set forth in paragraph (c) of this section. The initial prehearing conference shall

be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date.

(b)(1) The presiding officer (or the Commission or a panel of commissioners in a case over which it presides), on his own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to or during the course of a hearing, or to submit suggestions in writing, for the purpose of considering any of the matters set forth in paragraph (c) of this section. The initial prehearing conference shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date.

(2) Except as circumstances otherwise require, the presiding officer shall allow a reasonable period prior to commencement of the hearing for the orderly completion of all prehearing procedures, including discovery, and for the submission and disposition of all prehearing motions. Where the circumstances so warrant, the presiding officer shall, promptly after the hearing is ordered, call a preliminary prehearing conference, to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to formulate a schedule for their completion, and to set a date for commencement of the hearing.

(c) In conferences held, or in suggestions submitted, pursuant to paragraphs (a) and (b) of this section, the following matters, among others, may be considered:

(1) The necessity or desirability of simplification, clarification, amplification, or limitation of the issues;

(2) The admission of facts and of the genuineness of documents (see § 1.246), and the possibility of stipulating with respect to facts;

(3) The procedure at the hearing;

(4) The limitation of the number of witnesses;

(5) In cases arising under Title II of the Communications Act, the necessity or desirability of amending the pleadings and offers of settlement or proposals of adjustment; and

(6) In cases involving comparative broadcast applications:

(i) Narrowing the issues or the areas of inquiry and proof at the hearing;

(ii) [Reserved]

(iii) Reports and letters relating to surveys or contacts;

(iv) Assumptions regarding the availability of equipment;

(v) Network programming;

(vi) Assumptions regarding the availability of networks proposed;

(vii) Offers of letters in general;

(viii) The method of handling evidence relating to the past cooperation of existing stations owned and/or operated by the applicants with organizations in the area;

(ix) Proof of contracts, agreements, or understandings reduced to writing;

(x) Stipulations;

(xi) Need for depositions;

(xii) The numbering of exhibits;

(xiii) The order or offer of proof with relationship to docket number;

(xiv) The date for the formal hearing; and

(xv) Such other matters as may expedite the conduct of the hearing.

(7) In proceedings in which consent agreements may be negotiated (see § 1.93), the parties shall be prepared to state at the initial prehearing conference whether they are at that time willing to enter negotiations leading to a consent agreement.

(d) This paragraph applies to broadcast proceedings only.

(1) At the prehearing conference prescribed by this section, the parties to the proceeding shall be prepared to discuss the advisability of reducing any or all phases of their affirmative direct cases to written form.

(2) In hearings involving applications for new, improved and changed facilities and in comparative hearings involving only applications for new facilities, where it appears that it will contribute significantly to the disposition of the proceeding for the parties to submit all or any portion of their affirmative direct cases in writing, the presiding officer may, in his discretion, require them to do so.

(3) In other broadcast proceedings, where it appears that it will contribute

significantly to the disposition of the proceeding for the parties to submit all or any portion of their affirmative direct cases in writing, it is the policy of the Commission to encourage them to do so. However, the phase or phases of the proceeding to be submitted in writing, the dates for the exchange of the written material, and other limitations upon the effect of adopting the written case procedure (such as whether material ruled out as incompetent may be restored by other competent testimony) is to be left to agreement of the parties as approved by the presiding officer.

(4) In broadcast comparative cases involving applicants for only new facilities, oral testimony and cross examination will be permitted only where, in the discretion of the presiding judge, material issues of decisional fact cannot be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings.

(e) An official transcript of all conferences shall be made.

(f) The presiding officer may, upon the written request of a party or parties, approve the use of a speakerphone as a means of attendance at a prehearing conference if such use is found to conduce to the proper dispatch of business and the ends of justice.

[28 FR 12425, Nov. 22, 1963, as amended at 33 FR 463, Jan. 12, 1968; 36 FR 14133, July 30, 1971; 37 FR 7507, Apr. 15, 1972; 41 FR 14873, Apr. 8, 1976; 43 FR 33251, July 31, 1978; 56 FR 793, Jan. 9, 1991]

### § 1.249 Prehearing statement.

Immediately upon convening the formal hearing in any proceeding, the presiding officer shall enter upon the record a statement reciting all actions taken at the prehearing conferences, and incorporating into the record all of the stipulations and agreements of the parties which are approved by him, and any special rules which he may deem necessary to govern the course of the proceeding.

[28 FR 12425, Nov. 22, 1963. Redesignated at 33 FR 463, Jan. 12, 1968]

## HEARING AND INTERMEDIATE DECISION

### § 1.250 Discovery and preservation of evidence; cross-reference.

For provisions relating to prehearing discovery and preservation of admissible evidence, see §§ 1.311 through 1.325.

[33 FR 463, Jan. 12, 1968]

### § 1.251 Summary decision.

(a)(1) Any party to an adjudicatory proceeding may move for summary decision of all or any of the issues set for hearing. The motion shall be filed at least 20 days prior to the date set for commencement of the hearing. The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.

(2) With the permission of the presiding officer, or upon his invitation, a motion for summary decision may be filed at any time before or after the commencement of the hearing. No appeal from an order granting or denying a request for permission to file a motion for summary decision shall be allowed. If the presiding officer authorizes a motion for summary decision after the commencement of the hearing, proposed findings of fact and conclusions of law on those issues which the moving party believes can be resolved shall be attached to the motion, and any other party may file findings of fact and conclusions of law as an attachment to pleadings filed by him pursuant to paragraph (b) of this section.

(b) Within 14 days after a motion for summary decision is filed, any other party to the proceeding may file an opposition or a countermotion for summary decision. A party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is a genuine issue of material fact for determination at the hearing, that he cannot, for good cause, present by affidavit or otherwise facts essential to justify his opposition, or that summary decision is otherwise inappropriate.

(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The presiding officer may, in his discretion, set the matter for argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The presiding officer, giving appropriate weight to the nature of the proceeding, the issue or issues, the proof, and to the need for cross-examination, may grant a motion for summary decision to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision. If it appears from the affidavits of a party opposing the motion that he cannot, for good cause shown, present by affidavit or otherwise facts essential to justify his opposition, the presiding officer may deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or make such other order as is just.

(e) If all of the issues (or a dispositive issue) are determined on a motion for summary decision no hearing (or further hearing) will be held. The presiding officer will issue a Summary Decision, which is subject to appeal or review in the same manner as an Initial Decision. See §§1.271 through 1.282. If some of the issues only (including no dispositive issue) are decided on a motion for summary decision, or if the motion is denied, the presiding officer will issue a memorandum opinion and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeal from interlocutory rulings is governed by §1.301.

(f) The presiding officer may take any action deemed necessary to assure that summary decision procedures are not abused. He may rule in advance of a motion that the proceeding is not appropriate for summary decision, and may take such other measures as are necessary to prevent any unwarranted delay.

(1) Should it appear to the satisfaction of the presiding officer that a motion for summary decision has been presented in bad faith or solely for the purpose of delay, or that such a motion is patently frivolous, he will enter a determination to that effect upon the record.

(2) If, on making such determination, the presiding officer concludes that the facts warrant disciplinary action against an attorney, he will certify the matter to the Commission with his findings and recommendations, for consideration under §1.24.

(3) If, on making such determination, the presiding officer concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, he will certify the matter to the Commission, with his findings and recommendations, for a determination as to whether the facts warrant addition of an issue as to the character qualifications of that party.

[37 FR 7507, Apr. 15, 1972, as amended at 42 FR 56508, Oct. 26, 1977]

### §1.253 Time and place of hearing.

(a) The Commission will specify the day on which and the place at which any hearing is to commence.

(b) The presiding officer will specify the days on which subsequent hearing sessions are to be held.

(c) If the Commission specifies that a hearing is to commence in the District of Columbia, it shall be moved therefrom only by order of the Commission.

(d) If the Commission specifies that a hearing is to commence at a field location, all appropriate proceedings will be completed at such location before the hearing is moved therefrom. When such proceedings are completed, the presiding officer may move the hearing from the field location specified to another appropriate field location or to the District of Columbia.

### §1.254 Nature of the hearing; burden of proof.

Any hearing upon an application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission,

as well as the burden of proof upon all such issues, shall be upon the applicant except as otherwise provided in the order of designation.

(Sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309)

### § 1.255 Order of procedure.

(a) At hearings on a formal complaint or petition or in a proceeding for any instrument of authorization which the Commission is empowered to issue, the complainant, petitioner, or applicant, as the case may be, shall, unless the Commission otherwise orders, open and close. At hearings on protests, the protestant opens and closes the proceedings in case the issues are not specifically adopted by the Commission; otherwise the grantee does so. At hearings on orders to show cause, to cease and desist, to revoke or modify a station license under sections 312 and 316 of the Communications Act, or other like proceedings instituted by the Commission, the Commission shall open and close.

(b) At all hearings under Title II of the Communications Act, other than hearings on formal complaints, petitions, or applications, the respondent shall open and close unless otherwise specified by the Commission.

(c) In all other cases, the Commission or presiding officer shall designate the order of presentation. Intervenors shall follow the party in whose behalf intervention is made, and in all cases where the intervention is not in support of an original party, the Commission or presiding officer shall designate at what stage such intervenors shall be heard.

[28 FR 12425, Nov. 22, 1963, as amended at 33 FR 463, Jan. 12, 1968]

### § 1.258 Closing of the hearing.

The record of hearing shall be closed by an announcement to that effect at the hearing by the presiding officer when the taking of testimony has been concluded. In the discretion of the presiding officer, the record may be closed as of a future specified date in order to permit the admission into the record of exhibits to be prepared: *Provided,* The parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing which has been adjourned may not be closed by such officer prior to the day on which the hearing is to resume, except upon 10 days' notice to all parties to the proceeding.

### § 1.260 Certification of transcript.

After the close of the hearing, the complete transcript of testimony, together with all exhibits, shall be certified as to identity by the presiding officer and filed in the office of the Secretary of the Commission. Notice of such certification shall be served on all parties to the proceedings.

### § 1.261 Corrections to transcript.

At any time during the course of the proceeding, or as directed by the presiding officer, but not later than 10 days after the date of notice of certification of the transcript, any party to the proceeding may file with the presiding officer a motion requesting the correction of the transcript, which motion shall be accompanied by proof of service thereof upon all other parties to the proceeding. Within 5 days after the filing of such a motion, other parties may file a pleading in support of or in opposition to such motion. Thereafter, the presiding officer shall, by order, specify the corrections to be made in the transcript, and a copy of the order shall be served upon all parties and made a part of the record. The presiding officer, on his own initiative, may specify corrections to be made in the transcript on 5 days' notice.

[40 FR 51441, Nov. 5, 1975]

### § 1.263 Proposed findings and conclusions.

(a) Each party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law: *Provided, however,* That the presiding officer may direct any party other than Commission counsel to file proposed findings of fact and conclusions, briefs, or memoranda of law. Such proposed findings of fact, conclusions, briefs, and memoranda of law shall be filed within 20 days after the record is closed, unless additional time is allowed.

(b) All pleadings and other papers filed pursuant to this section shall be

accompanied by proof of service thereof upon all other counsel in the proceeding; if a party is not represented by counsel, proof of service upon such party shall be made.

(c) In the absence of a showing of good cause therefor, the failure to file proposed findings of fact, conclusions, briefs, or memoranda of law, when directed to do so, may be deemed a waiver of the right to participate further in the proceeding.

(5 U.S.C. 557)

### §1.264 Contents of findings of fact and conclusions.

Proposed findings of fact shall be set forth in serially numbered paragraphs and shall set out in detail and with particularity all basic evidentiary facts developed on the record (with appropriate citations to the transcript of record or exhibit relied on for each evidentiary fact) supporting the conclusions proposed by the party filing same. Proposed conclusions shall be separately stated. Proposed findings of fact and conclusions submitted by a person other than an applicant may be limited to those issues in connection with the hearing which affect the interests of such person.

(5 U.S.C. 557)

### §1.267 Initial and recommended decisions.

(a) Except as provided in this paragraph, in §§1.94, 1.251 and 1.274, or where the proceeding is terminated on motion (see §1.302), the presiding officer shall prepare an initial (or recommended) decision, which shall be transmitted to the Secretary of the Commission. In the case of rate making proceedings conducted under sections 201–205 of the Communications Act, the presumption shall be that the presiding officer shall prepare an initial or recommended decision. The Secretary will make the decision public immediately and file it in the docket of the case.

(b) Each initial and recommended decision shall contain findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; each initial decision shall also contain the appropriate rule or order, and the sanction, relief or denial thereof; and each recommended decision shall contain recommendations as to what disposition of the case should be made by the Commission. Each initial decision will show the date upon which it will become effective in accordance with the rules in this part in the absence of exceptions, appeal, or review.

(c) The authority of the Presiding Officer over the proceedings shall cease when he has filed his Initial or Recommended Decision, or if it is a case in which he is to file no decision, when he has certified the case for decision: *Provided*, however, That he shall retain limited jurisdiction over the proceeding for the purpose of effecting certification of the transcript and corrections to the transcript, as provided in §§1.260 and 1.261, respectively, and for the purpose of ruling initially on applications for awards of fees and expenses under the Equal Access to Justice Act.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409, 5 U.S.C. 557; secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083: 47 U.S.C. 154, 303, 307)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976; 47 FR 3786, Jan. 27, 1982]

## REVIEW PROCEEDINGS

### §1.271 Delegation of review function.

The Commission may direct, by order or rule, that its review function in a case or category of cases be performed by a commissioner, or a panel of commissioners, in which event the commissioner or panel shall exercise the authority and perform the functions which would otherwise have been performed by the Commission under §§1.273 through 1.282.

NOTE: To provide for an orderly completion of cases, exceptions and related pleadings filed after March 1, 1996, shall be directed to the Commission and will not be acted upon by the Review Board.

[62 FR 4171, Jan. 29, 1997]

### §1.273 Waiver of initial or recommended decision.

At the conclusion of the hearing or within 20 days thereafter, all parties to

the proceeding may agree to waive an initial or recommended decision, and may request that the Commission issue a final decision or order in the case. If the Commission has directed that its review function in the case be performed by a commissioner, a panel of commissioners, the request shall be directed to the appropriate review authority. The Commission or such review authority may in its discretion grant the request, in whole or in part, if such action will best conduce to the proper dispatch of business and to the ends of justice.

[28 FR 12425, Nov. 22, 1963, as amended at 62 FR 4171, Jan. 29, 1997]

### § 1.274 Certification of the record to the Commission for initial or final decision.

(a) Where the presiding officer is available to the Commission, and where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires, the Commission may direct that the record in a pending proceeding be certified to it for initial or final decision. Unless the Commission finds that due and timely execution of its functions imperatively and unavoidably requires that no recommended decision be issued, the presiding officer will prepare and file a recommended decision, which will be released with the Commission's initial or final decision.

(b) Where the presiding officer becomes unavailable to the Commission after the taking of testimony has been concluded, the Commission may direct that the record in a pending proceeding be certified to it for initial or final decision. In that event, the record shall be certified to the Commission by the Chief Administrative Law Judge.

(c)(1) Where the presiding officer becomes unavailable to the Commission after the taking of evidence has commenced but before it has been concluded, the Commission may order a rehearing before another presiding officer designated in accordance with § 1.241.

(2) Upon a finding that due and timely execution of its functions imperatively and unavoidably so requires, the Commission may (as an alternative) order that the hearing be continued by another presiding officer designated in accordance with § 1.241 or by the Commission itself. In that event, the officer continuing the hearing shall, upon completion of the hearing, certify the proceeding to the Commission for an initial or final decision. Unless the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably requires that no recommended decision be issued, the officer continuing the hearing shall prepare and file a recommended decision to be released with the Commission's initial or final decision. If all the parties expressly consent, and if the Commission does not order otherwise, the officer continuing the hearing may prepare an initial decision.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409)

### § 1.276 Appeal and review of initial decision.

(a)(1) Within 30 days after the date on which public release of the full text of an initial decision is made, or such other time as the Commission may specify, any of the parties may appeal to the Commission by filing exceptions to the initial decision, and such decision shall not become effective and shall then be reviewed by the Commission, whether or not such exceptions may thereafter be withdrawn. It is the Commission's policy that extensions of time for filing exceptions shall not be routinely granted.

(2) Exceptions shall be consolidated with the argument in a supporting brief and shall not be submitted separately. As used in this subpart, the term *exceptions* means the document consolidating the exceptions and supporting brief. The brief shall contain (i) a table of contents, (ii) a table of citations, (iii) a concise statement of the case, (iv) a statement of the questions of law presented, and (v) the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other materials relied on.

(b) The Commission may on its own initiative provide, by order adopted not

later than 20 days after the time for filing exceptions expires, that an initial decision shall not become final, and that it shall be further reviewed or considered by the Commission.

(c) In any case in which an initial decision is subject to review in accordance with paragraph (a) or (b) of this section, the Commission may, on its own initiative or upon appropriate requests by a party, take any one or more of the following actions:

(1) Hear oral argument on the exceptions;

(2) Require the filing of briefs;

(3) Prior to or after oral argument or the filing of exceptions or briefs, reopen the record and/or remand the proceedings to the presiding officer to take further testimony or evidence;

(4) Prior to or after oral argument or the filing of exceptions or briefs, remand the proceedings to the presiding officer to make further findings or conclusions; and

(5) Prior to or after oral argument or the filing of exceptions or briefs, issue, or cause to be issued by the presiding officer, a supplemental initial decision.

(d) No initial decision shall become effective before 50 days after public release of the full text thereof is made unless otherwise ordered by the Commission. The timely filing of exceptions, the further review or consideration of an initial decision on the Commission's initiative, or the taking of action by the Commission under paragraph (c) of this section shall stay the effectiveness of the initial decision until the Commission's review thereof has been completed. If the effective date of an initial decision falls within any further time allowed for the filing of exceptions, it shall be postponed automatically until 30 days after time for filing exceptions has expired.

(e) If no exceptions are filed, and the Commission has not ordered the review of an initial decision on its initiative, or has not taken action under paragraph (c) of this section, the initial decision shall become effective, an appropriate notation to that effect shall be entered in the docket of the case, and a ''Public Notice'' thereof shall be given by the Commission. The provisions of §1.108 shall not apply to such public notices.

(f) When any party fails to file exceptions within the specified time to an initial decision which proposes to deny its application, such party shall be deemed to have no interest in further prosecution of its application, and its application may be dismissed with prejudice for failure to prosecute.

(Sec. 40, 48 Stat. 1096, as amended; 47 U.S.C. 409)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976]

### §1.277 Exceptions; oral arguments.

(a) The consolidated supporting brief and exceptions to the initial decision (see §1.276(a)(2)), including rulings upon motions or objections, shall point out with particularity alleged material errors in the decision or ruling and shall contain specific references to the page or pages of the transcript of hearing, exhibit or order if any on which the exception is based. Any objection not saved by exception filed pursuant to this section is waived.

(b) Within the period of time allowed in §1.276(a) for the filing of exceptions, any party may file a brief in support of an initial decision, in whole or in part, which may contain exceptions and which shall be similar in form to the brief in support of exceptions (see §1.276(a)(2)).

(c) Except by special permission, the consolidated brief and exceptions will not be accepted if the exceptions and argument exceed 25 double-spaced typewritten pages in length. (The table of contents and table of citations are not counted in the 25 page limit; however, all other contents of and attachments to the brief are counted.) Within 10 days, or such other time as the Commission or delegated authority may specify, after the time for filing exceptions has expired, any other party may file a reply brief, which shall not exceed 25 double spaced typewritten pages and shall contain a table of contents and a table of citations. If exceptions have been filed, any party may request oral argument not later than five days after the time for filing replies to the exceptions has expired. The Commission or delegated authority, in its discretion, will grant oral argument by order only in cases where such oral

presentations will assist in the resolution of the issues presented. Within five days after release of an order designating an initial decision for oral argument, as provided in paragraph (d) of this section, any party who wishes to participate in oral argument shall file a written notice of intention to appear and participate in oral argument. Failure to file a written notice shall constitute a waiver of the opportunity to participate.

(d) Each order scheduling a case for oral argument will contain the allotment of time for each party for oral argument before the Commission. The Commission will grant, in its discretion, upon good cause shown, an extension of such time upon petition by a party, which petition must be filed within 5 days after issuance of said order for oral argument.

(e) Within 10 days after a transcript of oral argument has been filed in the office of the Secretary of the Commission, any party who participated in the oral argument may file with the Commission a motion requesting correction of the transcript, which motion shall be accompanied by proof of service thereof upon all other parties who participated in the oral argument. Within 5 days after the filing of such a motion, other parties may file a pleading in support of or in opposition to such motion. Thereafter, the officer who presided at the oral argument shall, by order, specify the corrections to be made in the transcript, and a copy of the order shall be served upon all parties to the proceeding. The officer who presided at the oral argument may, on his own initiative, by order, specify corrections to be made in the transcript on 5 days notice of the proposed corrections to all parties who participated in the oral argument.

(f) Any commissioner who is not present at oral argument and who is otherwise authorized to participate in a final decision may participate in making that decision after reading the transcript of oral argument.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976; 41 FR 34259, Aug. 13, 1976; 44 FR 12426, Mar. 7, 1979; 56 FR 793, Jan. 9, 1991; 62 FR 4171, Jan. 29, 1997]

### § 1.279 Limitation of matters to be reviewed.

Upon review of any initial decision, the Commission may, in its discretion, limit the issues to be reviewed to those findings and conclusions to which exceptions have been filed, or to those findings and conclusions specified in the Commission's order of review issued pursuant to § 1.276(b).

### § 1.282 Final decision of the Commission.

(a) After opportunity has been afforded for the filing of proposed findings of fact and conclusions, exceptions, supporting statements, briefs, and for the holding of oral argument as provided in this subpart, the Commission will issue a final decision in each case in which an initial decision has not become final.

(b) The final decision shall contain:

(1) Findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record;

(2) Rulings on each relevant and material exception filed; the Commission will deny irrelevant exceptions, or those which are not of decisional significance, without a specific statement of reasons prescribed by paragraph (b)(1) of this section; and

(3) The appropriate rule or oder and the sanction, relief or denial thereof.

(Sec. 8(b), 60 Stat. 2422; 5 U.S.C. 1007(b))

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976]

## INTERLOCUTORY ACTIONS IN HEARING PROCEEDINGS

### § 1.291 General provisions.

(a)(1) The Commission acts on petitions to amend, modify, enlarge or delete the issues in hearing proceedings which involve rule making matters exclusively. It also acts on interlocutory pleadings filed in matters or proceedings which are before the Commission.

(2) The Chief Administrative Law Judge acts on those interlocutory matters listed in § 0.351 of this chapter.

(3) All other interlocutory matters in hearing proceedings are acted on by the presiding officer. See §§ 0.218 and 0.341 of this chapter.

(4) Each interlocutory pleading shall indicate in its caption whether the pleading is to be acted upon by the Commission, the Chief Administrative Law Judge, or the presiding officer. If the pleading is to be acted upon by the presiding officer, he shall be identified by name.

(b) All interlocutory pleadings shall be submitted in accordance with the provisions of §§1.4, 1.44, 1.47, 1.48, 1.49, and 1.52.

(c)(1) Procedural rules governing interlocutory pleadings are set forth in §§1.294–1.298.

(2) Rules governing appeal from, and reconsideration of, interlocutory rulings made by the presiding officer are set forth in §§1.301 and 1.303.

(3) Rules governing the review of interlocutory rulings made by the Chief Administrative Law Judge are set forth in §§1.101, 1.102(b), 1.115, and 1.117. Petitions requesting reconsideration of an interlocutory ruling made by the Commission, or the Chief Administrative Law Judge will not be entertained. See, however, §1.113.

(d) No initial decision shall become effective under §1.276(e) until all interlocutory matters pending before the Commission in the proceeding at the time the initial decision is issued have been disposed of and the time allowed for appeal from interlocutory rulings of the presiding officer has expired.

(Secs. 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended; 47 CFR 0.61 and 0.283)

[29 FR 6443, May 16, 1964, as amended at 29 FR 12773, Sept. 10, 1964; 37 FR 19372, Sept. 20, 1972; 41 FR 14873, Apr. 8, 1976; 49 FR 4381, Feb. 6, 1984; 62 FR 4171, Jan. 29, 1997]

### §1.294 Oppositions and replies.

(a) Any party to a hearing may file an opposition to an interlocutory request filed in that proceeding.

(b) Except as provided in paragraph (c) of this section, oppositions shall be filed within 4 days after the original pleading is filed, and replies to oppositions will not be entertained. See, however, §1.732.

(c) Oppositions to pleadings in the following categories shall be filed within 10 days after the pleading is filed. Replies to such oppositions shall be filed within 5 days after the opposition is filed, and shall be limited to matters raised in the opposition.

(1) Petitions to amend, modify, enlarge, or delete the issues upon which the hearing was ordered.

(2) [Reserved]

(3) Petitions by adverse parties requesting dismissal of an application.

(4) Joint requests for approval of agreements filed pursuant to §1.525.

(d) Additional pleadings may be filed only if specifically requested or authorized by the person(s) who is to make the ruling.

[29 FR 6444, May 16, 1964, as amended at 39 FR 10909, Mar. 22, 1974]

### §1.296 Service.

No pleading filed pursuant to §1.51 or §1.294 will be considered unless it is accompanied by proof of service upon the parties to the proceeding.

(Secs. 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended; 47 CFR 0.61 and 0.283)

[49 FR 4381, Feb. 6, 1984, as amended at 62 FR 4171, Jan. 29, 1997]

### §1.297 Oral argument.

Oral argument with respect to any contested interlocutory matter will be held when, in the opinion of the person(s) who is to make the ruling, the ends of justice will be best served thereby. Timely notice will be given of the date, time, and place of any such oral argument.

[29 FR 6444, May 16, 1964]

### §1.298 Rulings; time for action.

(a) Unless it is found that irreparable injury would thereby be caused one of the parties, or that the public interest requires otherwise, or unless all parties have consented to the contrary, consideration of interlocutory requests will be withheld until the time for filing oppositions (and replies, if replies are allowed) has expired. As a matter of discretion, however, requests for continuances and extensions of time, requests for permission to file pleadings in excess of the length prescribed in this chapter, and requests for temporary relief may be ruled upon *ex parte* without waiting for the filing of responsive pleadings.

(b) In the discretion of the presiding officer, rulings on interlocutory matters may be made orally at the hearing. The presiding officer may, in his discretion, state his reasons on the record or subsequently issue a written statement of the reasons for his ruling, either separately or as part of the initial decision.

[28 FR 12425, Nov. 22, 1963, as amended at 29 FR 6444, May 16, 1964; 41 FR 14874, Apr. 8, 1976]

APPEAL AND RECONSIDERATION OF PRESIDING OFFICER'S RULING

**§ 1.301 Appeal from presiding officer's interlocutory ruling; effective date of ruling.**

(a) *Interlocutory rulings which are appealable as a matter of right.* Rulings listed in this paragraph are appealable as a matter of right. An appeal from such a ruling may not be deferred and raised as an exception to the initial decision.

(1) If the presiding officer's ruling denies or terminates the right of any person to participate as a party to a hearing proceeding, such person, as a matter of right, may file an appeal from that ruling.

(2) If the presiding officer's ruling requires testimony or the production of documents, over objection based on a claim of privilege, the ruling on the claim of privilege is appealable as a matter of right.

(3) If the presiding officer's ruling denies a motion to disqualify the presiding judge, the ruling is appealable as a matter of right.

(4) Rulings granting a joint request filed under § 1.525 without terminating the proceeding are appealable by any party as a matter of right.

(5) A ruling removing counsel from the hearing is appealable as a matter of right, by counsel on his own behalf or by his client. (In the event of such ruling, the presiding officer will adjourn the hearing for such period as is reasonably necessary for the client to secure new counsel and for counsel to familiarize himself with the case).

(b) *Other interlocutory rulings.* Except as provided in paragraph (a) of this section, appeals from interlocutory rulings of the presiding officer shall be filed only if allowed by the presiding officer. Any party desiring to file an appeal shall first file a request for permission to file appeal. The request shall be filed within 5 days after the order is released or (if no written order) after the ruling is made. Pleadings responsive to the request shall be filed only if they are requested by the presiding officer. The request shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception. The presiding officer shall determine whether the showing is such as to justify an interlocutory appeal and, in accordance with his determination, will either allow or disallow the appeal or modify the ruling. If the presiding officer allows or disallows the appeal, his ruling is final: *Provided, however,* That the Commission may, on its own motion, dismiss an appeal allowed by the presiding officer on the ground that objection to the ruling should be deferred and raised as an exception. In the discretion of the presiding officer, the request for permission to file appeal may be made orally, on the record of the proceeding. The request may be disposed of orally.

(1) If an appeal is not allowed, or is dismissed by the Commission, or if permission to file an appeal is not requested, objection to the ruling may be raised on review of the initial decision.

(2) If an appeal is allowed and is considered on its merits, the disposition on appeal is final. Objection to the ruling or to the action on appeal may not be raised on review of the initial decision.

(3) If the presiding officer modifies the ruling, any party adversely affected by the modified ruling may file a request for permission to file appeal, pursuant to the provisions of this paragraph.

(c) *Procedures, effective date.* (1) Unless the presiding officer orders otherwise, rulings made by him shall be effective when the order is released or (if no written order) when the ruling is made. The Commission may stay the effect of any ruling which comes before it for consideration on appeal.

(2) Appeals filed under paragraph (a) of this section shall be filed within 5 days after the order is released or (if no written order) after the ruling is made. Appeals filed under paragraph (b) of this section shall be filed within 5 days after the appeal is allowed.

(3) The appeal shall conform with the specifications set out in §1.49 and shall be subscribed and verified as provided in §1.52.

(4) The appeal shall be served on parties to the proceeding (see §§1.47 and 1.211), and shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

(5) The appeal shall not exceed 5 double-spaced typewritten pages.

(6) Appeals are acted on by the Commission.

(7) Oppositions and replies shall be served and filed in the same manner as appeals and shall be served on appellant if he is not a party to the proceeding. Oppositions shall be filed within 5 days after the appeal is filed. Replies shall not be permitted, unless the Commission specifically requests them. Oppositions shall not exceed 5 double-spaced typewritten pages. Replies shall not exceed 5 double-spaced typewritten pages.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[35 FR 17333, Nov. 11, 1970, as amended at 40 FR 39509, Aug. 28, 1975; 41 FR 14874, Apr. 8, 1976; 41 FR 28789, July 13, 1976; 46 FR 58682, Dec. 3, 1981; 55 FR 36641, Sept. 6, 1990; 62 FR 4171, Jan. 29, 1997]

### §1.302 Appeal from presiding officer's final ruling; effective date of ruling.

(a) If the presiding officer's ruling terminates a hearing proceeding, any party to the proceeding, as a matter of right, may file an appeal from that ruling within 30 days after the ruling is released.

(b) Any party who desires to preserve the right to appeal shall file a notice of appeal within 10 days after the ruling is released. If a notice of appeal is not filed within 10 days, the ruling shall be effective 30 days after the ruling is released and within this period, may be reviewed by the Commission on its own motion. If an appeal is not filed following notice of appeal, the ruling shall be effective 50 days after the day of its release and, within this period, may be reviewed by the Commission on its own motion. If an appeal is filed, or if the Commission reviews the ruling on its own motion, the effect of the ruling is further stayed pending the completion of proceedings on appeal or review.

(c) The appeal shall conform with the specifications set out in §1.49 and shall be subscribed and verified as provided in §1.52.

(d) The appeal shall be served on parties to the proceeding (see §§1.47 and 1.211), and shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

(e) The appeal shall not exceed 25 double-spaced typewritten pages.

(f) The Commission will act on the appeal.

(g) Oppositions and replies shall be filed and served in the same manner as the appeal. Oppositions to an appeal shall be filed within 15 days after the appeal is filed. Replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the oppositions. Oppositions shall not exceed 25 double-spaced typewritten pages. Replies shall not exceed 10 double-spaced typewritten pages.

[35 FR 17333, Nov. 11, 1970, as amended at 36 FR 7423, Apr. 20, 1971; 62 FR 4171, Jan. 29, 1997]

## THE DISCOVERY AND PRESERVATION OF EVIDENCE

AUTHORITY: Sections 1.311 through 1.325 are issued under secs. 4, 303, 409, 48 Stat., as amended, 1066, 1082, 1096; 47 U.S.C. 154, 303, 409, 5 U.S.C. 552.

### §1.311 General.

Sections 1.311 through 1.325 provide for taking the deposition of any person (including a party), for interrogatories to parties, and for orders to parties relating to the production of documents and things and for entry upon real property. These procedures may be used for the discovery of relevant facts, for the production and preservation of evidence for use at the hearing, or for both purposes.

(a) *Applicability*. For purposes of discovery, these proecdures may be used in any case of adjudication (as defined in the Administrative Procedure Act)

which has been designated for hearing. For the preservation of evidence, they may be used in any case which has been designated for hearing and is conducted under the provisions of this subpart (see § 1.201).

(b) *Scope of examination.* Persons and parties may be examined regarding any matter, not privileged, which is relevant to the hearing issues, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection to use of these procedures that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence. The use of these procedures against the Commission is subject to the following additional limitations:

(1) The informer's privilege shall encompass information which may lead to the disclosure of an informer's identity.

(2) Commission personnel may not be questioned by deposition for the purposes of discovery except on special order of the Commission, but may be questioned by written interrogatories under § 1.323. Interrogatories shall be served on the appropriate Bureau Chief (see § 1.21(b)). They will be answered and signed by those personnel with knowledge of the facts. The answers will be served by the Secretary of the Commission upon parties to the proceeding.

(3) Commission records are not subject to discovery under § 1.325. The inspection of Commission records is governed by the Freedom of Information Act, as amended, and by §§ 0.451 through 0.467 of this chapter. Commission employees may be questioned by written interrogatories regarding the existence, nature, description, custody, condition and location of Commission records, but may not be questioned concerning their contents unless the records are available (or are made available) for inspection under §§ 0.451 through 0.467. See § 0.451(b)(5) of this chapter.

(4) Subject to paragraphs (b) (1) through (3) of this section, Commission personnel may be questioned generally by written interrogatories regarding the existence, description, nature, custody, condition and location of relevant documents and things and regarding the identity and location of persons having knowledge of relevant facts, and may otherwise only be examined regarding facts of the case as to which they have direct personal knowledge.

(c) *Schedule for use of the procedures.* (1) In comparative broadcast proceedings involving applicants for only new facilities, discovery commences with the release of the hearing designation order, and, in routine cases, the discovery phase of the proceeding will be conducted in a manner intended to conclude that portion of the case within 90 days of the release of the designation order.

(2) In all other proceedings, except as provided by special order of the presiding officer, discovery may be initiated before or after the prehearing conference provided for in § 1.248 of this part.

(3) In all proceedings, the presiding officer may at any time order the parties or their attorneys to appear at a conference to consider the proper use of these procedures, the time to be allowed for such use, and/or to hear agrument and render a ruling on disputes that arise under these rules.

(d) *Who shall act.* Actions provided for in §§ 1.311 through 1.325 will, in most cases, be taken by the officer designated to preside at the hearing (see § 1.241). If the proceeding, or a particular matter to which the action relates, is before the Commission, a commissioner or panel of commissioners, or the Chief Administrative Law Judge, the action will be taken by such officer or body. The term *presiding officer,* as used in §§ 1.311 through 1.325 shall be understood to refer to the appropriate officer or body. See §§ 0.341, 0.351, 0.365, and 1.271 of this chapter.

(e) *Stipulations regarding the taking of depositions.* If all of the parties so stipulate in writing and if there is no interference to the conduct of the proceeding, depositions may be taken before any person, at any time (subject to the limitation below) or place, upon any notice and in any manner, and when so

taken may be used like other depositions. An original and one copy of the stipulation shall be filed with the Secretary of the Commission, and a copy of the stipulation shall be served on the presiding officer, at least 3 days before the scheduled taking of the deposition.

[33 FR 463, Jan. 12, 1968, as amended at 40 FR 39509, Aug. 28, 1975; 47 FR 51873, Nov. 18, 1982; 56 FR 794, Jan. 9, 1991; 62 FR 4171, Jan. 29, 1997]

### §1.313 Protective orders.

The use of the procedures set forth in §§1.311 through 1.325 of this part is subject to control by the presiding officer, who may issue any order consistent with the provisions of those sections which is appropriate and just for the purpose of protecting parties and deponents or of providing for the proper conduct of the proceeding. Whenever doing so would be conducive to the efficient and expeditious conduct of the proceeding, the presiding officer may convene a conference to hear argument and issue a ruling on any disputes that may arise under these rules. The ruling, whether written or delivered on the record at a conference, may specify any measures, including the following to assure proper conduct of the proceeding or to protect any party or deponent from annoyance, expense, embarassment or oppression:

(a) That depositions shall not be taken or that interrogatories shall not be answered.

(b) That certain matters shall not be inquired into.

(c) That the scope of the examination or interrogatories shall be limited to certain matters.

(d) That depositions may be taken only at some designated time or place, or before an officer, other than that stated in the notice.

(e) That depositions may be taken only by written interrogatories or only upon oral examination.

(f) That, after being sealed, the deposition shall be opened only by order of the presiding officer.

[33 FR 463, Jan. 12, 1968, as amended at 56 FR 794, Jan. 9, 1991]

### §1.315 Depositions upon oral examination—notice and preliminary procedure.

(a) *Notice.* A party to a hearing proceeding desiring to take the deposition of any person upon oral examination shall give a minimum of 21 days notice in writing to every other party, to the person to be examined, and to the presiding officer. An original and three copies of the notice shall be filed with the Secretary of the Commission. Related pleadings shall be served and filed in the same manner. The notice shall contain the following information:

(1) The name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The time and place for taking the deposition of each person to be examined, and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(3) The matters upon which each person will be examined. See §1.319.

(b) *Responsive pleadings.* (1) Within 7 days after service of the notice to take depositions, a motion opposing the taking of depositions may be filed by any party to the proceeding or by the person to be examined. See §1.319(a).

(2) Within 14 days after service of the notice to take depositions, a response to the opposition motion may be filed by any party to the proceeding.

(3) Additional pleadings should not be filed and will not be considered.

(4) The computation of time provisions set forth in §1.4(g) shall not apply to pleadings filed under the provisions of this paragraph.

(c) *Protective order.* On an opposition motion filed under paragraph (b) of this section, or on his own motion, the presiding officer may issue a protective order. See §1.313. A protective order issued by the presiding officer on his own motion may be issued at any time prior to the date specified in the notice for the taking of depositions.

(d) *Authority to take depositions.* (1) If an opposition motion is not filed within 7 days after service of the notice to take depositions, and if the presiding officer does not on his own motion

issue a protective order prior to the time specified in the notice for the taking of depositions, the depositions described in the notice may be taken. An order for the taking of depositions is not required.

(2) If an opposition motion is filed, the depositions described in the notice shall not be taken until the presiding officer has acted on that motion. If the presiding officer authorizes the taking of depositions, he may specify a time, place or officer for taking them different from that specified in the notice to take depositions.

(3) If the presiding officer issues a protective order, the depositions described in the notice may be taken (if at all) only in accordance with the provisions of that order.

(e) *Broadcast comparative proceedings involving applicants for only new facilities.* In these cases, the 21-day advance notice provision of paragraph (a) of this section shall be inapplicable to depositions of active and passive owners of applicants in the proceeding. All applicants in such proceedings should be prepared to make their active and passive owners available for depositions during the period commencing with the deadline for filing notices of appearance and ending 90 days after the release of the designation order, if such depositions are requested by a party to the proceeding. All such depositions will be conducted in Washington, DC or in the community of license of the proposed station, at the deponent's option, unless all parties agree to some other location.

[33 FR 10571, July 25, 1968, as amended at 56 FR 794, Jan. 9, 1991]

### § 1.316 Depositions upon written interrogatories—notice and preliminary procedure.

(a) *Service of interrogatories; notice.* A party to the hearing proceeding desiring to take the deposition of any person upon written interrogatories shall serve the interrogatories upon every other party and shall give a minimum of 35 days notice in writing to every other party and to the person to be examined. An original and three copies of the interrogatories and the notice (and of all related pleadings) shall be filed with the Secretary of the Commission. A copy of the interrogatories and the notice (and of all related pleadings) shall be served on the presiding officer. The notice shall contain the following information:

(1) The name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The time and place for taking the deposition of each person to be examined, and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(3) The matters upon which each person will be examined. See § 1.319.

(b) *Additional interrogatories.* Within 7 days after the filing and service of the original interrogatories, any other party to the proceeding may, in the same manner, file and serve additional interrogatories to be asked of the same witness at the same time and place, with notice to the witness of any additional matters upon which he will be examined.

(c) *Cross interrogatories.* Within 14 days after the filing and service of the original interrogatories, any party to the proceeding may, in the same manner, file and serve cross interrogatories, which shall be limited to matters raised in the original or in the additional interrogatories.

(d) *Responsive pleadings.* (1) Within 21 days after service of the original interrogatories, any party to the proceeding may move to limit or suppress any original, additional or cross interrogatory, and the person to be examined may file a motion opposing the taking of depositions. See § 1.319(a).

(2) Within 28 days after service of the original interrogatories, a response to a motion to limit or suppress any interrogatory or to a motion opposing the taking of depositions may be filed by any party to the proceeding.

(3) Additional pleadings should not be filed and will not be considered.

(e) *Protective order.* On a motion to limit or suppress or an opposition motion filed under paragraph (d) of this section, or on his own motion, the presiding officer may issue a protective order. See § 1.313. A protective order issued by the presiding officer on his own

motion may be issued at any time prior to the date specified in the notice for the taking of depositions.

(f) *Authority to take depositions.* (1) If an opposition motion is not filed within 21 days after service of the notice to take depositions, and if the presiding officer does not on his own motion issue a protective order prior to the time specified in the notice for the taking of depositions, the depositions described in the notice may be taken. An order for the taking of depositions is not required.

(2) If an opposition motion is filed, the depositions described in the notice shall not be taken until the presiding officer has acted on that motion. If the presiding officer authorizes the taking of depositions, he may specify a time, place or officer for taking them different from that specified in the notice to take depositions.

(3) If the presiding officer issues a protective order, the depositions described in the notice may be taken (if at all) only in accordance with the provisions of that order.

NOTE: The computation of time provisions of §1.4(g) shall not apply to interrogatories and pleadings filed under the provisions of this section.

[33 FR 10571, July 25, 1968]

### §1.318 The taking of depositions.

(a) *Persons before whom depositions may be taken.* Depositions shall be taken before any judge of any court of the United States; any U.S. Commissioner; any clerk of a district court; any chancellor, justice or judge of a supreme or superior court; the mayor or chief magistrate of a city; any judge of a county court, or court of common pleas of any of the United States; any notary public, not being of counsel or attorney to any party, nor interested in the event of the proceeding; or presiding officers, as provided in §1.243.

(b) *Attendance of witnesses.* The attendance of witnesses at the taking of depositions may be compelled by the use of subpena as provided in §§1.331 through 1.340.

(c) *Oath; transcript.* The officer before whom the deposition is to be taken shall administer an oath or affirmation to the witness and shall personally, or by someone acting under his direction and in his presence record the testimony of the witness. The testimony may be taken stenographically or, upon approval by the presiding officer, testimony may be taken through the use of telephonically or electronically recorded methods, including videotape. In the event these latter methods are used for the deposition, the parties may agree to the waiver of the provisions of paragraphs (e) and (f) as appropriate and as approved by the presiding officer.

(d) *Examination.* (1) In the taking of depositions upon oral examination, the parties may proceed with examination and cross-examination of deponents as permitted at the hearing. In lieu of participating in the oral examination, parties served with the notice to take depositions may transmit written interrogatories to the officer designated in the notice, who shall propound them to the witness and record the answers verbatim.

(2) In the taking of depositions upon written interrogatories, the party who served the original interrogatories shall transmit copies of all interrogatories to the officer designated in the notice, who shall propound them to the witness and record the answers verbatim.

(e) *Submission of deposition to witness; changes; signing.* When the testimony is fully transcribed, the deposition of each witness shall be submitted to him for examination and shall be read to or by him, unless such examination and reading are waiver by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver, the illness or absence of the witness, or of his refusal to sign, together with the reason (if any) given therefor; and the deposition may then be used as fully as though signed, unless upon a motion to

suppress, the presiding officer holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part.

(f) *Certification of deposition and filing by officer; copies.* The officer shall certify on the deposition that the witness was duly sworn by him, that the deposition is a true record of the testimony given by the witness, and that said officer is not of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked ''Deposition of (here insert name of witness)'' and shall promptly send the original and two copies of the deposition and of all exhibits, together with the notice and any interrogatories received by him, by certified mail to the Secretary of the Commission.

[33 FR 463, Jan. 12, 1968, as amended at 47 FR 51873, Nov. 18, 1982]

### § 1.319 Objections to the taking of depositions.

(a) *Objections to be made by motion prior to the taking of depositions.* If there is objection to the substance of any interrogatory or to examination on any matter clearly covered by the notice to take depositions, the objection shall be made in a motion opposing the taking of depositions or in a motion to limit or suppress the interrogatory as provided in §§ 1.315(b) and 1.316(d) and shall not be made at the taking of the deposition.

(b) *Objections to be made at the taking of depositions.* Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition. If such objection is made, counsel shall, if possible, agree upon the measures required to obviate, remove, or cure such errors. The measures agreed upon shall be taken. If agreement cannot be reached, the objection shall be noted on the deposition by the officer taking it, and the testimony objected to shall be taken subject to the objection.

(c) *Additional objections which may be made at the taking of depositions.* Objection may be made at the taking of depositions on the ground of relevancy or privilege, if the notice to take depositions does not clearly indicate that the witness is to be examined on the matters to which the objection relates. See paragraph (a) of this section. Objection may also be made on the ground that the examination is being conducted in such manner as to unreasonably annoy, embarrass, or oppress a deponent or party.

(1) When there is objection to a line of questioning, as permitted by this paragraph, counsel shall, if possible, reach agreement among themselves regarding the proper limits of the examination.

(2) If counsel cannot agree on the proper limits of the examination the taking of depositions shall continue on matters not objected to and counsel shall, within 24 hours, either jointly or individually, telegraph statements of their positions to the presiding officer, together with the telephone numbers at which they and the officer taking the depositions can be reached, or shall otherwise jointly confer with the presiding officer. If individual statements are submitted, copies shall be provided to all counsel participating in the taking of depositions.

(3) The presiding officer shall promptly rule upon the question presented or take such other action as may be appropriate under § 1.313, and shall give notice of his ruling, by telephone, to counsel who submitted statements and to the officer taking the depositions. The presiding officer shall thereafter reduce his ruling to writing.

(4) The taking of depositions shall continue in accordance with the presiding officer's ruling. Such rulings are not subject to appeal.

[33 FR 463, Jan. 12, 1968]

### § 1.321 Use of depositions at the hearing.

(a) No inference concerning the admissibility of a deposition in evidence shall be drawn because of favorable action on the notice to take depositions.

(b) Except as provided in this paragraph and in §1.319, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness, or the competency, relevancy or materiality of testimony are waived by failure to make them before or during the taking of depositions if (and only if) the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Objection on the ground of privilege is waived by failure to make it before or during the taking of depositions.

(c) A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (d)(2) of this section. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) At the hearing (or in a pleading), any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership or association which is a party may be used by an adverse party for any purpose.

(3) To the extent that the affirmative direct case of a party is made in writing pursuant to §1.248(d), the deposition of any witness, whether or not a party, may be used by any party for any purpose, provided the witness is made available for cross-examination. In all cases, the deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds: (i) That the witness is dead; or (ii) that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any hearing has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

[33 FR 463, Jan. 12, 1968, as amended at 41 FR 14874, Apr. 8, 1976]

### §1.323 Interrogatories to parties.

(a) *Interrogatories.* Any party may serve upon any other party written interrogatories to be answered in writing by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories shall be served upon all parties to the proceeding. An original and three copies of the interrogatories, answers, and all related pleadings shall be filed with the Secretary of the Commission. A copy of the interrogatories, answers

and all related pleadings shall be served on the presiding officer.

(1) Except as otherwise provided in a protective order, the number of interrogatories or sets of interrogatories is not limited.

(2) Except as provided in such an order, interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered.

(b) *Answers and objections.* Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections by the attorney making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 14 days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow. Answers may be used in the same manner as depositions of a party (see § 1.321(d)).

(c) *Motion to compel an answer.* Any party to the proceeding may, within 7 days, move for an order with respect to any objection or other failure to answer an interrogatory. For purposes of this paragraph, an evasive or incomplete answer is a failure to answer; and if the motion is based on the assertion that the answer is evasive or incomplete, it shall contain a statement as to the scope and detail of an answer which would be considered responsive and complete. The party upon whom the interrogatories were served may file a response within 7 days after the motion is filed, to which he may append an answer or an amended answer. Additional pleadings should not be submitted and will not be considered.

(d) *Action by the presiding officer.* If the presiding officer determines that an objection is not justified, he shall order that the answer be served. If an interrogatory has not been answered, the presiding officer may rule that the right to object has been waived and may order that an answer be served. If an answer does not comply fully with the requirements of this section, the presiding officer may order that an amended answer be served, may specify the scope and detail of the matters to be covered by the amended answer, and may specify any appropriate procedural consequences (including adverse findings of fact and dismissal with prejudice) which will follow from the failure to make a full and responsive answer. If a full and responsive answer is not made, the presiding officer may issue an order invoking any of the procedural consequences specified in the order to compel an answer.

(e) *Appeal.* As order to compel an answer is not subject to appeal.

[33 FR 10572, July 25, 1968, as amended at 35 FR 17334, Nov. 11, 1970]

### § 1.325 Discovery and production of documents and things for inspection, copying, or photographing.

(a) A party to a Commission proceeding may request any other party except the Commission to produce and permit inspection and copying or photographing, by or on behalf of the requesting party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things which constitute or contain evidence within the scope of the examination permitted by § 1.311(b) of this part and which are in his possession, custody, or control or to permit entry upon designated land or other property in his possession or control for purposes of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by § 1.311(b) of this part.

(1) Such requests need not be filed with the presiding officer, but copies of the request shall be served on all other parties to the proceeding.

(2) The party against whom the request was made must, within 10 days, comply with the request or object to the request, claiming a privilege or raising other proper objections. If the request is not complied with in whole or in part, the requesting party may file a motion to compel production of documents or access to property with the presiding officer. A motion to compel must be accompanied by a copy of the original request and the responding party's objection or claim of privilege.

Motions to compel must be filed within five business days of the objection or claim of privilege.

(3) In resolving any disputes involving the production of documents or access to property, the presiding officer may direct that the materials objected to be presented to him for *in camera* inspection.

(b) Any party seeking the production of Commission records should proceed under § 0.460 or § 0.461 of this chapter. See §§ 0.451 through 0.467.

(c) In comparative broadcast proceedings involving applicants for only new facilities, all applicants will serve the materials listed in the Standard Document Production Order and the Standardized Integration Statement on all other parties in the case that have filed Notices of Appearance. The exchange of these materials must be accomplished within five days after the date established for filing notices of appearance (see § 1.221).

(1) *Standard Document Production Order.* The following documents must be produced or objected to on grounds of privilege (Unless otherwise directed by the presiding officer, copies of these documents should not be filed with the presiding officer):

(i) All formation and organizational documents, including articles of incorporation, by laws, partnership agreements, voting rights, proxies, and any amendments to the foregoing documents;

(ii) All minutes of meetings relating to the application;

(iii) All documents relating to the rights or plans of persons or entities to purchase an interest in the applicant or of current owners to alineate their interests;

(iv) All documents relating to pledges, mortgages, security interests, or other encumbrances of any kind with respect to the applicant;

(v) All bank letters and other financing documents with the dollar amounts unexpurgated;

(vi) All documents relating to the applicant's proposed transmitter site;

(vii) All documents relating to communications by proposed integrated principals with respect to their proposed participation in the management of the station and the disposition of their current employment;

(viii) All documents relating to prior integration pledges made by principals who propose to be integrated into the management of the station at issue;

(ix) All documents relating to communications by and between principals of the applicant concerning the application, including communications between active and passive principals;

(x) Representative documents relating to enhancement credits and preferences sought by the applicant's principals for local residence, civic participation, past broadcast experience, minority/female status, and the like;

(xi) All documents relating to commitments to divest other media interests; and

(xii) All documents that identify or describe the principals who are responsible for completing the application, arranging financing, obtaining the applicant's transmitter site, publishing the required notices, establishing the local public inspection file, and retaining lawyers, engineers, and other professionals.

(2) *Standardized Integration Statement.* On the same day that documents are exchanged pursuant to the Standardized Document Production Order, the following information must also be provided by all applicants (Copies of this statement should be filed with the presiding officer and served on all parties to the proceeding that have filed Notices of Appearance):

(i) The ownership structure of the applicant, i.e., whether it is a partnership, limited partnership, or a corporation (if a corporation, indicate whether it has voting and non-voting stock);

(ii) The ownership percentage of each owner;

(iii) The identity of the owners who will work at the proposed station, what titles and duties they will have, how many hours they will work per week, and how they will reconcile any current business interests or employment with that commitment to the station;

(iv) All other media interests held by the persons identified under paragraph (c)(2)(ii), of this section;

(v) Whether the integrated owners will claim credit for minority or female ownership and if so, specifically on what basis;

(vi) Whether the integrated owners will claim credit for local residence and civic involvement in the city of license or service area and if so, specifically on what basis (including a detailed chronology of past residence and a description of civic activities and their duration);

(vii) Whether the integrated owners will claim credit for previous broadcast experience and if so, provide a detailed list of the stations they worked at, the titles and duties they had, and the years in which they were so employed; and

(viii) Whether the applicant will claim a daytimer preference and if so, specifically on what basis.

(3) *Supplemental document production.* Parties may request additional relevant documents, not called for in the Standard Document Production Order, at any time after the release of the designation order. Supplemental requests for documents based on materials exchanged pursuant to the Standardized Document Production Order and Standardized Integration Statement must be filed no later than ten days after those standardized exchanges. Other supplemental document requests must be filed no later than ten days after receipt of the information on which those requests are based. Supplemental document requests will be handled under the procedures established in paragraph (a) of this section. To facilitate the resolution of disputes concerning the production of documents, the presiding officer may convene a pre-hearing conference to hear argument on and dispose of any such disputes.

[33 FR 463, Jan. 12, 1968, as amended at 40 FR 39509, Aug. 28, 1975; 56 FR 794, Jan. 9, 1991; 56 FR 25639, June 5, 1991]

## SUBPENAS

AUTHORITY: Sections 1.331 and 1.333 through 1.340 are issued under sec. 409, 48 Stat. 1096; 47 U.S.C. 409.

### § 1.331 Who may sign and issue.

Subpenas requiring the attendance and testimony of witnesses, and subpenas requiring the production of any books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation or hearing, may be signed and issued as follows:

(a) Hearings before the Commission en banc, an individual commissioner, or a panel of commissioners: By any commissioner participating in the conduct of the hearing.

(b) Hearings before an administrative law judge: By the administrative law judge or, in his absence, by the Chief Administrative Law Judge.

### § 1.333 Requests for issuance of subpena.

(a) Unless submitted on the record while a hearing is in progress, requests for a subpena ad testificandum shall be submitted in writing.

(b) Requests for a subpena *duces tecum* shall be submitted in writing, duly subscribed and verified, and shall specify with particularity the books, papers, and documents desired and the facts expected to be proved thereby. Where the subpena *duces tecum* request is directed to a nonparty to the proceeding, the presiding officer may issue the same, upon request, without an accompanying subpena to enforce a notice to take depositions, provided for in paragraph (e) of this section, where it appears that the testimony of said person is not required in connection with the subpena *duces tecum.*

(c) All requests for subpenas shall be supported by a showing of the general relevance and materiality of the evidence sought.

(d) Requests for subpenas shall be submitted in triplicate, but need not be served on the parties to the proceeding.

(e) Requests for issuance of a subpena ad testificandum to enforce a notice to take depositions shall be submitted in writing. Such requests may be submitted with the notice or at a later date. The request shall not be granted until the period for the filing of motions opposing the taking of depositions has expired or, if a motion has been filed, until that motion has been acted on.

Regardless of the time when the subpena request is submitted, it need not be accompanied by a showing that relevant and material evidence will be adduced, but merely that the person will be examined regarding a nonprivileged matter which is relevant to the hearing issues. The subpena request may ask that a subpena duces tecum be contemporaneously issued commanding the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by §1.311(b) but in that event the subpena request will be subject to the provisions of §1.313 and paragraph (b) of this section.

(f) Requests for issuance of a subpena duces tecum to enforce an order for the production of documents and things for inspection and copying under §1.325 may be submitted with the motion requesting the issuance of such an order. Regardless of the time when the subpena request is submitted, it need not be accompanied by a showing that relevant and material evidence will be adduced, but merely that the documents and things to be examined contain nonprivileged matter which is relevant to the subject matter of the proceeding.

[28 FR 12425, Nov. 22, 1963, as amended at 33 FR 466, Jan. 12, 1968; 47 FR 51873, Nov. 18, 1982]

### §1.334 Motions to quash.

Any person against whom a subpena is directed may file a motion to quash or limit the subpena, setting forth the reasons why the subpena should not be complied with or why it should be limited in scope.

### §1.335 Rulings.

Prompt notice, including a brief statement of the reasons therefor, will be given of the denial, in whole or in part, of a request for subpena or of a motion to quash.

### §1.336 Service of subpenas.

(a) A subpena may be served by a United States marshal or his deputy, by Commission personnel, or by any person who is not a party to the proceeding and is not less than 18 years of age.

(b) Service of a subpena upon the person named therein shall be made by exhibiting the original subpena to him, by reading the original subpena to him if he is unable to read, by delivering the duplicate subpena to him, and by tendering to him the fees for one day's attendance at the proceeding to which he is summoned and the mileage allowed by law. If the subpena is issued on behalf of the United States or an officer or agency thereof, attendance fees and mileage need not be tendered.

### §1.337 Return of service.

(a) If service of the subpena is made by a person other than a United States marshal or his deputy such person shall make affidavit thereof, stating the date, time, and manner of service.

(b) In case of failure to make service, the reasons for the failure shall be stated on the original subpena by the person who attempted to make service.

(c) The original subpena, bearing or accompanied by the required return affidavit or statement, shall be returned forthwith to the Secretary of the Commission or, if so directed on the subpena, to the official before whom the person named in the subpena is required to appear.

### §1.338 Subpena forms.

(a) Subpena forms, marked ''Original'', ''Duplicate'', and ''Triplicate'', and bearing the Commission's seal, may be obtained from the Commission's Dockets Division. These forms are to be completed and submitted with any request for issuance of a subpena.

(b) If the request for issuance of a subpena is granted, the ''Original'' and ''Duplicate'' copies of the subpena are returned to the person who submitted the request. The ''Triplicate'' copy is retained for the Commission's files.

(c) The ''Original'' copy of the subpena includes a form for proof of service. This form is to be executed by the person who effects service and returned by him to the Secretary of the Commission or, if so directed on the subpena, to the official before whom the person named in the subpena is required to appear.

(d) The ''Duplicate'' copy of the subpena shall be served upon the person

named therein and retained by him. This copy should be presented in support of any claim for witness fees or mileage allowances for testimony on behalf of the Commission.

### § 1.339 Witness fees.

Witnesses who are subpenaed and respond thereto are entitled to the same fees, including mileage, as are paid for like service in the courts of the United States. Fees shall be paid by the party at whose instance the testimony is taken.

### § 1.340 Attendance of witness; disobedience.

The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpena, the Commission or any party to a proceeding before the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

## EVIDENCE

### § 1.351 Rules of evidence.

Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings. Such rules may be relaxed if the ends of justice will be better served by so doing.

### § 1.352 Cumulative evidence.

The introduction of cumulative evidence shall be avoided, and the number of witnesses that may be heard in behalf of a party on any issue may be limited.

### § 1.353 Further evidence during hearing.

At any stage of a hearing, the presiding officer may call for further evidence upon any issue and may require such evidence to be submitted by any party to the proceeding.

### § 1.354 Documents containing matter not material.

If material and relevant matter offered in evidence is embraced in a document containing other matter not material or relevant, and not intended to be put in evidence, such document will not be received, but the party offering the same shall present to other counsel, and to the presiding officer, the original document, together with true copies of such material and relevant matter taken therefrom, as it is desired to introduce. Upon presentation of such matter, material and relevant, in proper form, it may be received in evidence, and become a part of the record. Other counsel will be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant.

### § 1.355 Documents in foreign language.

Every document, exhibit, or other paper written in a language other than English, which shall be filed in any proceeding, or in response to any order, shall be filed in the language in which it is written together with an English translation thereof duly verified under oath to be a true translation. Each copy of every such document, exhibit, or other paper filed shall be accompanied by a separate copy of the translation.

### § 1.356 Copies of exhibits.

No document or exhibit, or part thereof, shall be received as, or admitted in, evidence unless offered in duplicate. In addition, when exhibits of a documentary character are to be offered in evidence, copies shall be furnished to other counsel unless the presiding officer otherwise directs.

### § 1.357 Mechanical reproductions as evidence.

Unless offered for the sole purpose of attempting to prove or demonstrate sound effect, mechanical or physical reproductions of sound waves shall not be admitted in evidence. Any party desiring to offer any matter alleged to be contained therein or thereupon shall have such matter typewritten on paper of the size prescribed by § 1.49, and the same shall be identified and offered in

duplicate in the same manner as other exhibits.

### §1.358 Tariffs as evidence.

In case any matter contained in a tariff schedule on file with the Commission is offered in evidence, such tariff schedule need not be produced or marked for identification, but the matter so offered shall be specified with particularity (tariff and page number) in such manner as to be readily identified, and may be received in evidence by reference subject to check with the original tariff schedules on file.

### §1.359 Proof of official record; authentication of copy.

An official record or entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by the judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent, or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

### §1.360 Proof of lack of record.

The absence of an official record or entry of a specified tenor in an official record may be evidenced by a written statement signed by an officer, or by his deputy, who would have custody of the official record, if it existed, that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as provided in §1.359. Such statement and certificate are admissible as evidence that the records of his office contain no such record or entry.

### §1.361 Other proof of official record.

Sections 1.359 and 1.360 do not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

### §1.362 Production of statements.

After a witness is called and has given direct testimony in a hearing, and before he is excused, any party may move for the production of any statement of such witness, or part thereof, pertaining to his direct testimony, in possession of the party calling the witness, if such statement has been reduced to writing and signed or otherwise approved or adopted by the witness. Such motion shall be directed to the presiding officer. If the party declines to furnish the statement, the testimony of the witness pertaining to the requested statement shall be stricken.

[33 FR 466, Jan. 12, 1968]

### §1.363 Introduction of statistical data.

(a) All statistical studies, offered in evidence in common carrier hearing proceedings, including but not limited to sample surveys, econometric analyses, and experiments, and those parts of other studies involving statistical methodology shall be described in a summary statement, with supplementary details added in appendices so as to give a comprehensive delineation of the assumptions made, the study plan utilized and the procedures undertaken. In the case of sample surveys, there shall be a clear description of the survey design, including the definition of the universe under study, the sampling frame, and the sampling units; an explanation of the method of selecting the sample and the characteristics measured or counted. In the case of econometric investigations, the econometric model shall be completely described and the reasons given for each

assumption and statistical specification. The effects on the final results of changes in the assumptions should be made clear. When alternative models and variables have been employed, a record shall be kept of these alternative studies, so as to be available upon request. In the case of experimental analyses, a clear and complete description of the experimental design shall be set forth, including a specification of the controlled conditions and how the controls were realized. In addition, the methods of making observations and the adjustments, if any, to observed data shall be described. In the case of every kind of statistical study, the following items shall be set forth clearly: The formulas used for statistical estimates, standard errors and test statistics, the description of statistical tests, plus all related computations, computer programs and final results. Summary descriptions of input data shall be submitted. Upon request, the actual input data shall be made available.

(b) In the case of all studies and analyses offered in evidence in common carrier hearing proceedings, other than the kinds described in paragraph (a) of this section, there shall be a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection, estimation and/or testing. In addition, there shall be a clear statement of the facts and judgments upon which conclusions are based and a statement of the relative weights given to the various factors in arriving at each conclusion, together with an indication of the alternative courses of action considered. Lists of input data shall be made available upon request.

[35 FR 16254, Oct. 16, 1970]

### § 1.364 Testimony by speakerphone.

(a) If all parties to the proceeding consent and the presiding officer approves, the testimony of a witness may be taken by speakerphone.

(b) Documents used by the witness shall be made available to counsel by the party calling the witness in advance of the speakerphone testimony. The taking of testimony by speakerphone shall be subject to such other ground rules as the parties may agree upon.

[43 FR 33251, July 31, 1978]

## Subpart C—Rulemaking Proceedings

AUTHORITY: 5 U.S.C. 553.

SOURCE: 28 FR 12432, Nov. 22, 1963, unless otherwise noted.

GENERAL

### § 1.399 Scope.

This subpart shall be applicable to notice and comment rulemakings proceedings conducted under 5 U.S.C. 553, and shall have no application to formal rulemaking (or rate making) proceedings unless the Commission directs that it shall govern the conduct of a particular proceeding.

[42 FR 25735, May 19, 1977]

### § 1.400 Definitions.

As used in this subpart, the term *party* refers to any person who participates in a proceeding by the timely filing of a petition for rule making, comments on a notice of proposed rule making, a petition for reconsideration, or responsive pleadings in the manner prescribed by this subpart. The term does not include those who submit letters, telegrams or other informal materials.

[41 FR 1287, Jan. 7, 1976]

PETITIONS AND RELATED PLEADINGS

### § 1.401 Petitions for rulemaking.

(a) Any interested person may petition for the issuance, amendment or repeal of a rule or regulation.

(b) The petition for rule making shall conform to the requirements of §§ 1.49, 1.52 and 1.419(b) (or § 1.420(e), if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, DC 20554.

(c) The petition shall set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected.

(d) Petitions for amendment of the FM Table of Assignments (§73.202 of this chapter) or the Television Table of Assignments (§73.606) shall be served by petitioner on any Commission licensee or permittee whose channel assignment would be changed by grant of the petition. The petition shall be accompanied by a certificate of service on such licensees or permittees. A draft Notice of Proposed Rule Making may be submitted with a petition for amendment of the FM or Television Table of Assignments.

(e) Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

[28 FR 12432, Nov. 22, 1963, as amended at 28 FR 14503, Dec. 31, 1963; 40 FR 53391, Nov. 18, 1975; 45 FR 42621, June 25, 1980]

### §1.403 Notice and availability.

All petitions for rule making (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of §1.401 will be given a file number and, promptly thereafter, a ''Public Notice'' will be issued (by means of a Commission release entitled ''Petitions for Rule Making Filed'') as to the petition, file number, nature of the proposal, and date of filing. Petitions for rule making are available at the Commission's Dockets Reference Center (1919 M Street NW., Room 239, Washington, DC).

[60 FR 13637, Mar. 14, 1995]

### §1.405 Responses to petitions; replies.

Except for petitions to amend the FM Television or Air-Ground Tables of Assignments:

(a) Any interested person may file a statement in support of or in opposition to a petition for rule making prior to Commission action on the petition but not later than 30 days after ''Public Notice'', as provided for in §1.403, is given of the filing of such a petition. Such a statement shall be accompanied by proof of service upon the petitioner on or prior to the date of filing in conformity with §1.47 and shall conform in other aspects with the requirements of §§1.49, 1.52, and 1.419(b).

(b) Any interested person may file a reply to statements in support of or in opposition to a petition for rule making prior to Commission action on the petition but not later than 15 days after the filing of such a statement. Such a reply shall be accompanied by proof of service upon the party or parties filing the statement or statements to which the reply is directed on or prior to the date of filing in conformity with §1.47 and shall conform in other aspects with the requirements of §§1.49, 1.52, and 1.419(b).

(c) No additional pleadings may be filed unless specifically requested by the Commission or authorized by it.

(d) The Commission may act on a petition for rule making at any time after the deadline for the filing of replies to statements in support of or in opposition to the petition. Statements in support of or in opposition to a petition for rule making, and replies thereto, shall not be filed after Commission action.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12413, Nov. 22, 1963, as amended at 28 FR 14503, Dec. 31, 1963; 45 FR 42621, June 25, 1980; 46 FR 60404, Dec. 9, 1981]

### §1.407 Action on petitions.

If the Commission determines that the petition discloses sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding, and notice and public procedure thereon are required or deemed desirable by the Commission, an appropriate notice of proposed rule making will be issued. In those cases where notice and public procedure thereon are not required, the Commission may issue a final order amending the rules. In all other cases the petition for rule making will be denied and the petitioner will be notified of the Commission's action with the grounds therefor.

## RULEMAKING PROCEEDINGS

### §1.411 Commencement of rulemaking proceedings.

Rulemaking proceedings are commenced by the Commission, either on

it own motion or on the basis of a petition for rulemaking. See §§ 1.401–1.407.

### § 1.412 Notice of proposed rulemaking.

(a) Except as provided in paragraphs (b) and (c) of this section, prior notice of proposed rulemaking will be given.

(1) Notice is ordinarily given by publication of a ''Notice of Proposed Rule Making'' in the FEDERAL REGISTER. A summary of the full decision adopted by the Commission constitutes a ''Notice of Proposed Rulemaking'' for purposes of FEDERAL REGISTER publication.

(2) If all persons subject to the proposed rules are named, the proposal may (in lieu of publication) be personally served upon those persons.

(3) If all persons subject to the proposed rules are named and have actual notice of the proposal as a matter of law, further prior notice of proposed rulemaking is not required.

(b) Rule changes (including adoption, amendment, or repeal of a rule or rules) relating to the following matters will ordinarily be adopted without prior notice:

(1) Any military, naval, or foreign affairs function of the United States.

(2) Any matter relating to Commission management or personnel or to public property, loans, grants, benefits, or contracts.

(3) Interpretative rules.

(4) General statements of policy.

(5) Rules of Commission organization, procedure, or practice.

(c) Rule changes may in addition be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The finding of good cause and a statement of the basis for that finding are in such situations published with the rule changes.

(d) In addition to the notice provisions of paragraph (a) of this section, the Commission, before prescribing any requirements as to accounts, records, or memoranda to be kept by carriers, will notify the appropriate State agencies having jurisdiction over any carrier involved of the proposed requirements.

[28 FR 12432, Nov. 22, 1963, as amended at 51 FR 7445, Mar. 4, 1986]

### § 1.413 Content of notice.

A notice of the proposed issuance, amendment, or repeal of a rule will include the following:

(a) A statement of the time, nature and place of any public rulemaking proceeding to be held.

(b) Reference to the authority under which the issuance, amendment or repeal of a rule is proposed.

(c) Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(d) The docket number assigned to the proceeding.

(e) A statement of the time for filing comments and replies thereto.

### § 1.415 Comments and replies.

(a) After notice of proposed rulemaking is issued, the Commission will afford interested persons an opportunity to participate in the rulemaking proceeding through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner.

(b) A reasonable time will be provided for submission of comments in support of or in opposition to proposed rules, and the time provided will be specified in the notice of proposed rulemaking.

(c) A reasonable time will be provided for filing comments in reply to the original comments, and the time provided will be specified in the notice of proposed rulemaking.

(d) No additional comments may be filed unless specifically requested or authorized by the Commission.

NOTE: In some (but not all) rulemaking proceedings, interested persons may also communicate with the Commission and its staff on an *ex parte* basis, provided certain procedures are followed. See §§ 1.420 and 1.1200 *et seq.* See also ___ FCC 2d ___ (1980) (i.e., this order).

(e) For time limits for filing motions for extension of time for filing responses to petitions for rulemaking, replies to such responses, comments filed

in response to notices of proposed rulemaking, replies to such comments, see §1.46(b).

[28 FR 12432, Nov. 22, 1963, as amended at 42 FR 28888, June 6, 1977; 45 FR 45591, July 7, 1980; 52 FR 37460, Oct. 7, 1987]

### §1.419 Form of comments and replies; number of copies.

(a) Comments, replies, and other documents filed in a rulemaking proceeding shall conform to the requirements of §1.49.

(b) An original and 4 copies of all comments, briefs and other documents filed in a rulemaking proceeding shall be furnished the Commission. The distribution of such copies shall be as follows:

| | |
|---|---|
| Secretary (original and 1) | 2 |
| Bureau | 2 |
| Information office | 1 |
| Total | 5 |

Participants filing the required 5 copies who also wish each Commissioner to have a personal copy of the comments may file an additional 5 copies. The distribution of such copies shall be as follows:

| | |
|---|---|
| Commissioners | 5 |
| Secretary | 2 |
| Bureau | 2 |
| Information office | 1 |
| Total | 10 |

However, members of the general public who wish to express their interest by participating informally in a rulemaking proceeding may do so by submitting an original and one copy of their comments, without regard to form, provided only that the Docket Number is specified in the heading. Informal comments filed after close of the reply comment period, or, if on reconsideration, the reconsideration reply comment period, should be labeled ''ex parte'' pursuant to section 1.1206(a) of this chapter. Letters submitted to Commissioners or Commission staff will be treated in the same way as informal comments, as set forth above. Also such informal participants who wish the responsible members of the staff and the Commissioners to have personal copies may file an additional 7 copies. The distribution of such copies shall be as follows:

| | |
|---|---|
| Commissioners | 5 |
| Secretary | 2 |
| Bureau | 2 |
| Total | 9 |

(c) Any person desiring to file identical documents in more than one docketed rulemaking proceeding shall furnish the Commission two additional copies of any such document for each additional docket. This requirement does not apply if the proceedings have been consolidated.

[28 FR 12432, Nov. 22, 1963, as amended at 41 FR 50399, Nov. 16, 1976; 50 FR 26567, June 27, 1985; 54 FR 29037, July 11, 1989]

### §1.420 Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments.

(a) Comments filed in proceedings for amendment of the FM Table of Allotments (§73.202 of this chapter) or the Television Table of Allotments (§73.606 of this chapter) which are initiated on a petition for rule making shall be served on petitioner by the person who files the comments.

(b) Reply comments filed in proceedings for amendment of the FM or Television Tables of Allotments shall be served on the person(s) who filed the comments to which the reply is directed.

(c) Such comments and reply comments shall be accompanied by a certificate of service.

(d) Counterproposals shall be advanced in initial comments only and will not be considered if they are advanced in reply comments.

(e) An original and 4 copies of all petitions for rulemaking, comments, reply comments, and other pleadings shall be filed with the Commission.

(f) Petitions for reconsideration and responsive pleadings shall be served on parties to the proceeding and on any licensee or permittee whose authorization may be modified to specify operation on a different channel, and shall be accompanied by a certificate of service.

(g) The Commission may modify the license or permit of an FM station to another class of channel or of a UHF

TV station to a VHF channel in the same community in the course of the rule making proceeding to amend § 73.202(b), § 73.504(a) or § 73.606(b) if any of the following conditions are met:

(1) There is no other timely filed expression of interest, or

(2) If another interest in the proposed channel is timely filed an additional equivalent class of channel is also allotted, assigned or available for application, or

(3) With respect to FM, the modification of license or permit would occur on a mutually exclusive higher class adjacent or co-channel.

NOTE 1: In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. See § 73.203(b) of this chapter.

(h) Where licensees (or permittees) of television broadcast stations jointly petition to amend § 73.606(b) and to exchange channels, and where one of the licensees (or permittees) operates on a commercial channel while the other operates on a reserved noncommercial educational channel within the same band, and the stations serve substantially the same market, then the Commission may amend § 73.606(b) and modify the licenses (or permits) of the petitioners to specify operation on the appropriate channels upon a finding that such action will promote the public interest, convenience, and necessity.

NOTE 2: Licensees and permittees operating Class A FM stations who seek to upgrade their facilities to Class B1, B, C3, C2, C1, or C on Channel 221, and whose proposed 1 mV/m signal contours would overlap the Grade B contour of a television station operating on Channel 6 must meet a particularly heavy burden by demonstrating that grants of their upgrade requests are in the public interest. In this regard, the Commission will examine the record in rule making proceedings to determine the availability of existing and potential non-commercial education service.

(i) In the course of the rule making proceeding to amend § 73.202(b) or § 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

(j) Whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the party withdrawing its interest nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the dismissal or withdrawal of the expression of interest.

(5) In addition, within 5 days of a party's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither it nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the party withdrawing its expression of interest; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[39 FR 44022, Dec. 20, 1974, as amended at 40 FR 53391, Nov. 18, 1975; 41 FR 1287, Jan. 7, 1976; 51 FR 15629, Apr. 25, 1986; 51 FR 20291, June 4, 1986; 52 FR 8260, Mar. 17, 1987; 52 FR 25866, July 9, 1987; 54 FR 16366, Apr. 24, 1989; 54 FR 26201, June 22, 1989; 55 FR 28914, July 16, 1990; 58 FR 38535, July 19, 1993; 59 FR 59503, Nov. 17, 1994; 61 FR 43472, Aug. 23, 1996]

### § 1.421 Further notice of rulemaking.

In any rulemaking proceeding where the Commission deems it warranted, a

further notice of proposed rulemaking will be issued with opportunity for parties of record and other interested persons to submit comments in conformity with §§1.415 and 1.419.

### §1.423 Oral argument and other proceedings.

In any rulemaking where the Commission determines that an oral argument, hearing or any other type of proceeding is warranted, notice of the time, place and nature of such proceeding will be published in the FEDERAL REGISTER.

[58 FR 66300, Dec. 20, 1993]

### §1.425 Commission action.

The Commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding and will issue a decision incorporating its finding and a brief statement of the reasons therefor.

### §1.427 Effective date of rules.

(a) Any rule issued by the Commission will be made effective not less than 30 days from the time it is published in the FEDERAL REGISTER except as otherwise specified in paragraphs (b) and (c) of this section.

(b) For good cause found and published with the rule, any rule issued by the Commission may be made effective within less than 30 days from the time it is published in the FEDERAL REGISTER. Rules involving any military, naval or foreign affairs function of the United States; matters relating to agency management or personnel, public property, loans, grants, benefits or contracts; rules granting or recognizing exemption or relieving restriction; rules of organization, procedure or practice; or interpretative rules; and statements of policy may be made effective without regard to the 30-day requirement.

(c) In cases of alterations by the Commission in the required manner or form of keeping accounts by carriers, notice will be served upon affected carriers not less than 6 months prior to the effective date of such alterations.

### §1.429 Petition for reconsideration.

(a) Any interested person may petition for reconsideration of a final action in a proceeding conducted under this subpart (see §§1.407 and 1.425). Where the action was taken by the Commission, the petition will be acted on by the Commission. Where action was taken by a staff official under delegated authority, the petition may be acted on by the staff official or referred to the Commission for action.

NOTE: The staff has been authorized to act on rulemaking proceedings described in §1.420 and is authorized to make editorial changes in the rules (see §0.231(d)).

(b) A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

(2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts relied on is required in the public interest.

(c) The petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken should be changed.

(d) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement. The petition for reconsideration shall not exceed 25 double-spaced typewritten pages.

(e) Except as provided in §1.420(f), petitions for reconsideration need not be served on parties to the proceeding. (However, where the number of parties

is relatively small, the Commission encourages the service of petitions for reconsideration and other pleadings, and agreements among parties to exchange copies of pleadings.) When a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the FEDERAL REGISTER. The time for filing oppositions to the petition runs from the date of public notice. *See* § 1.4(b).

(f) Oppositions to a petition for reconsideration shall be filed within 15 days after the date of public notice of the petition's filing and need be served only on the person who filed the petition. *See* § 1.4(b). Oppositions shall not exceed 25 double-spaced typewritten pages.

(g) Replies to an opposition shall be filed within 10 days after the time for filing oppositions has expired and need be served only on the person who filed the opposition. Replies shall not exceed 10 double-spaced typewritten pages.

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of §§ 1.49 and 1.52, except that they need not be verified. Except as provided in § 1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554.

(i) The Commission may grant the petition for reconsideration in whole or in part or may deny the petition. Its order will contain a concise statement of the reasons for the action taken. Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstance, a second petition for reconsideration may be dismissed by the staff as repetitious.

(j) The filing of a petition for reconsideration is not a condition precedent to judicial review of any action taken by the Commission, except where the person seeking such review was not a party to the proceeding resulting in the action or relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. Subject to the provisions of paragraph (b) of this section, such a person may qualify to seek judicial review by filing a petition for reconsideration.

(k) Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with any rule or operate in any manner to stay or postpone its enforcement. However, upon good cause shown, the Commission will stay the effective date of a rule pending a decision on a petition for reconsideration. See, however, § 1.420(f).

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[41 FR 1287, Jan. 7, 1976, as amended at 44 FR 5436, Jan. 26, 1979; 46 FR 18556, Mar. 25, 1981; 52 FR 49161, Dec. 30, 1987]

INQUIRIES

### § 1.430 Proceedings on a notice of inquiry.

The provisions of this subpart also govern proceedings commenced by issuing a ''Notice of Inquiry,'' except that such proceedings do not result in the adoption of rules, and Notices of Inquiry are not required to be published in the FEDERAL REGISTER.

[51 FR 7445, Mar. 4, 1986]

## Subpart D—Broadcast Applications and Proceedings

SOURCE: 44 FR 38483, July 2, 1979, unless otherwise noted.

### § 1.502 Emergency Broadcast Authorizations.

See § 73.913.

GENERAL FILING REQUIREMENTS

### § 1.511 Applications required.

See § 73.3511.

### § 1.512 Where to file; number of copies.

See § 73.3512.

### § 1.513 Who may sign applications.

See § 73.3513.

### § 1.514 Content of applications.

See § 73.3514.

### § 1.516 Specification of facilities.

See § 73.3516.

**§1.517 Contingent applications.**

See §73.3517.

**§1.518 Inconsistent or conflicting applications.**

See §73.3518.

**§1.519 Repetitious applications.**

See §73.3519.

**§1.520 Multiple applications.**

See §73.3520.

**§1.522 Amendment of applications.**

See §73.3522.

**§1.525 Agreements between parties for amendment or dismissal of, or failure to prosecute, broadcast applications.**

See §73.3525.

**§1.526 Records to be maintained locally for public inspection by commercial applicants, permittees and licensees.**

See §73.3526.

**§1.527 Records to be maintained locally for public inspection by noncommercial educational applicants, permittees and licensees.**

See §73.3527.

**§1.531 Formal and informal applications.**

See §73.3511.

**§1.533 Application forms for authority to construct a new station or make changes in an existing station.**

See §73.3533.

**§1.534 Application for extension of construction permit or for construction permit to replace expired construction permit.**

See §73.3534.

**§1.536 Application for license to cover construction permit.**

See §73.3536.

**§1.538 Application for modification of license.**

See §73.3538.

**§1.539 Application for renewal of license.**

See §73.3539.

**§1.540 Application for voluntary assignment or transfer of control.**

See §73.3540.

**§1.541 Application for involuntary assignment of license or transfer of control.**

See §73.3541.

**§1.542 Application for temporary authorization.**

See §73.3542.

**§1.543 Application for renewal or modification of special service authorization.**

See §73.3543.

**§1.544 Application for broadcast station to conduct field strength measurements and for experimental operation.**

See §§73.157 and 73.1510.

**§1.545 Application for permit to deliver programs to foreign countries.**

See §73.3545.

**§1.546 Application to determine operating power by direct measurement of antenna power.**

See §73.45.

**§1.549 Requests for extension of authority to operate without required monitors, indicating instruments, and EBS Attention Signal devices.**

See §73.3549.

**§1.550 Requests for new or modified call sign assignments.**

See §73.3550.

**§1.561 Staff consideration of applications which receive action by the Commission.**

See §73.3561.

**§1.562 Staff consideration of applications which do not require action by the Commission.**

See §73.3562.

**§1.564 Acceptance of applications.**

See §73.3564.

**§1.566 Defective applications.**

See §73.3566.

**§ 1.568 Dismissal of applications.**

See § 73.3568.

**§ 1.570 AM broadcast station applications involving other North American countries.**

See § 73.3570.

**§ 1.571 Processing AM broadcast station applications.**

See § 73.3571.

**§ 1.572 Processing TV broadcast and translator station applications.**

See § 73.3572.

**§ 1.573 Processing FM broadcast and translator station applications.**

See § 73.3573.

**§ 1.574 Processing of international broadcast station applications.**

See § 73.3574.

**§ 1.578 Amendments to applications for renewal, assignment or transfer of control.**

See § 73.3578.

**§ 1.580 Local public notice of filing of broadcast applications.**

See § 73.3580.

**§ 1.584 Petitions to deny.**

See § 73.3584.

**§ 1.587 Procedure for filing informal applications.**

See § 73.3587.

**§ 1.591 Grants without hearing.**

See § 73.3591.

**§ 1.592 Conditional grant.**

See § 73.3592.

**§ 1.593 Designation for hearing.**

See § 73.3593.

**§ 1.594 Local public notice of designation for hearing.**

See § 73.3594.

**§ 1.597 Procedures on transfer and assignment applications.**

See § 73.3597.

**§ 1.598 Period of construction.**

See § 73.3598.

**§ 1.599 Forfeiture of construction permit.**

See § 73.3599.

**§ 1.601 Simultaneous modification and renewal of license.**

See § 73.3601.

**§ 1.603 Special waiver procedure relative to applications.**

See § 73.3603.

**§ 1.605 Retention of applications in hearing status after designation for hearing.**

See § 73.3605.

**§ 1.612 Annual employment report.**

See § 73.3612.

**§ 1.613 Filing of contracts.**

See § 73.3613.

**§ 1.615 Ownership reports.**

See § 73.3615.

## Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

SOURCE: 28 FR 12450, Nov. 22, 1963, unless otherwise noted.

### GENERAL

**§ 1.701 Show cause orders.**

(a) The Commission may commence any proceeding within its jurisdiction against any common carrier by serving upon the carrier an order to show cause. The order shall contain a statement of the particulars and matters concerning which the Commission is inquiring and the reasons for such action, and will call upon the carrier to appear before the Commission at a place and time therein stated and give evidence upon the matters specified in the order.

(b) Any carrier upon whom an order has been served under this section shall file its answer within the time specified in the order. Such answer shall specifically and completely respond to all allegations and matters contained in the show cause order.

(c) All papers filed by a carrier in a proceeding under this section shall

conform with the specifications of §§1.49 and 1.50 and the subscription and verification requirements of §1.52.

[28 FR 12450, Nov. 22, 1963, as amended at 36 FR 7423, Apr. 20, 1971]

### §1.703 Appearances.

(a) *Hearings.* Except as otherwise required by §1.221 regarding application proceedings, by §1.91 regarding proceedings instituted under section 312 of the Communications Act of 1934, as amended, or by Commission order in any proceeding, no written statement indicating intent to appear need be filed in advance of actual appearance at any hearing by any person or his attorney.

(b) *Oral arguments.* Within 5 days after release of an order designating an initial decision for oral argument or within such other time as may be specified in the order, any party who wishes to participate in the oral argument shall file a written statement indicating that he will appear and participate. Within such time as may be specified in an order designating any other matter for oral argument, any person wishing to participate in the The Commission will advise him whether he may participate. (See §1.277 for penalties for failure to file appearance statements in proceedings involving oral arguments on initial decisions.)

(c) *Commission counsel.* The requirement of paragraph (b) of this section shall not apply to counsel representing the Commission or the Chief of the Common Carrier Bureau.

## COMPLAINTS

### §1.711 Formal or informal complaints.

Complaints filed against carriers under section 208 of the Communications Act may be either formal or informal.

## INFORMAL COMPLAINTS

### §1.716 Form.

An informal complaint shall be in writing and should contain: (a) The name, address and telephone number of the complaint, (b) the name of the carrier against which the complaint is made, (c) a complete statement of the facts tending to show that such carrier did or omitted to do anything in contravention of the Communications Act, and (d) the specific relief of satisfaction sought.

[51 FR 16039, Apr. 30, 1986]

### §1.717 Procedure.

The Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised. If the complainant is not satisfied by the carrier's response and the Commission's disposition, it may file a formal complaint in accordance with §1.721 of this part.

[51 FR 16039, Apr. 30, 1986]

### §1.718 Unsatisfied informal complaints; formal complaints relating back to the filing dates of informal complaints.

When an informal complaint has not been satisfied pursuant to §1.717, the complainant may file a formal complaint with this Commission in the form specified in §1.721. Such filing will be deemed to relate back to the filing date of the informal complaint: *Provided,* That the formal complaint: (a) Is filed within 6 months from the date of the carrier's report, (b) makes reference to the date of the informal complaint, and (c) is based on the same cause of action as the informal complaint. If no formal complaint is filed within the 6-month period, the complainant will be deemed to have abandoned the unsatisfied informal complaint.

[51 FR 16040, Apr. 30, 1986]

FORMAL COMPLAINTS

## § 1.720 General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer and reply but may also include other written submissions such as briefs and written interrogatories. All written submissions, both substantive and procedural, must conform to the following standards:

(a) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, including damages, should be pleaded fully and with specificity.

(b) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation, or a defense to such alleged violation.

(c) Facts must be supported by relevant documentation or affidavit.

(d) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.

(e) Opposing authorities must be distinguished.

(f) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(g) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(h) Specific reference must be made to any tariff provision relied on in support of a claim or defense. Parties are encouraged to provide copies of the tariff or relevant portions thereof.

(i) All statements purporting to summarize or explain Commission orders or policies must cite, in standard legal form, the Commission ruling upon which such statements are based.

[53 FR 11852, Apr. 11, 1988, as amended at 58 FR 25572, Apr. 27, 1993]

## § 1.721 Format and content.

(a) A formal complaint shall contain:

(1) The name of each complainant and defendant;

(2) The occupation, address and telephone number of each complainant and, to the extent known, each defendant;

(3) The name, address, and telephone number of complainant's attorney, if represented by counsel;

(4) Citation to the section of the Communications Act and/or order and/or regulation of the Commission alleged to have been violated.

(5) A complete statement of facts which, if proven true, would constitute such a violation;

(6) Complete identification or description, including relevant time period, of the communications, transmissions, services, or other carrier conduct complained of and nature of the injury sustained;

(7) The relief sought, including recovery of damages and the amount of damages claimed, if known; and

(8) Whether suit has been filed in any court or other government agency on the basis of the same cause of action.

(b) The following format may be used in cases to which it is applicable, with such modifications as the circumstances may render necessary:

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, DC 20554

In the matter of

_____

Complainant,

v.

_____

Defendant.

File No. (To be inserted by the Common Carrier Bureau)

*Complaint*

To: The Commission.

The complainant (here insert full name of each complainant and, if a corporation, the corporate title of such complainant) shows that:

1. (Here state occupation, post office address, and telephone number of each complainant).

2. (Here insert the name, occupation and, to the extent known, address and telephone number of defendants).

3. (Here insert fully and clearly the specific act or thing complained of, together with

such facts as are necessary to give a full understanding of the matter, including relevant legal and documentary support).

Wherefore, complainant asks (here state specifically the relief desired).

(Date)

(Name of each complainant)

(Name, address, and telephone number of attorney, if any)

[53 FR 11853, Apr. 11, 1988]

### §1.722 Damages.

(a) In case recovery of damages is sought, the complaint shall contain appropriate allegations showing such evidence that will identify, with reasonable certainty, the amount of damages for which recovery is sought.

(b) Damages will not be awarded upon a complaint unless specifically requested. Damages may be awarded, however, upon a supplemental complaint based upon a finding of the Commission in the original proceeding. *Provided that:*

(1) If recovery of damages or overcharges is first sought by supplemental complaint, such supplemental complaint must be filed within, and recovery is limited to, the statutory periods of limitations contained in section 415 of the Communications Act;

(2) A claim for recovery of damages contained in a supplemental complaint based on a finding of the Commission in the original proceeding which meets the requirements of paragraph (a) of this section shall relate back to the filing date of the original formal complaint if:

(i) The original complaint clearly and unequivocally requests the recovery of damages (even if the precise amount and other specific details are unknown), and

(ii) Such supplemental complaint is filed no later than 60 days after public notice (as defined in §1.4(b) of the rules) of a decision on the merits of the original complaint.

[53 FR 11853, Apr. 11, 1988]

### §1.723 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the same defendant and concern substantially the same facts and alleged violation of the Communications Act.

(b) Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but should be separately stated and numbered.

[53 FR 11853, Apr. 11, 1988]

### §1.724 Answers.

(a) Any carrier upon which a copy of a formal complaint, supplemental complaint, amended complaint, or cross complaint is served under this subpart shall answer within 30 days of service of the pleading to which the answer is made, unless otherwise directed by the Commission.

(b) The answer shall advise the parties and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any party failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(c) A party shall state concisely its defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. When a pleader intends in good faith to deny only part of an averment, the pleader shall specify so much of it as is true and shall deny only the remainder. The pleader may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits. When the pleader intends to controvert

all averments, the pleader may do so by general denial.

(d) Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are deemed to be admitted when not denied in this responsive pleading.

(e) Affirmative defenses to allegations contained in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (c) of this section.

[53 FR 11853, Apr. 11, 1988, as amended at 58 FR 25572, Apr. 27, 1993]

### § 1.725 Cross complaints.

A cross complaint, seeking any relief within the jurisdiction of the Commission against any carrier which is a party (complainant or defendant) to the proceeding, may be filed by a defendant with its answer. For the purpose of this subpart, the term *cross complaint* shall include counterclaim.

[53 FR 11854, Apr. 11, 1988]

### § 1.726 Replies.

Within 10 days after service of an answer containing affirmative defenses presented in accordance with § 1.724(e), a complainant may file and serve a reply, which shall be responsive to only those allegations contained in affirmative defenses.

[58 FR 25572, Apr. 27, 1993]

### § 1.727 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularly the grounds and authority therefor, and setting forth the relief or order sought.

(b) A motion that the allegations in the complaint be made more definite and certain shall be filed within 15 days after service of a complaint by the Commission.

(c) Where the matter involved in the motion is one of procedure or discovery, the moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor.

(d) A party opposing any motion concerning procedure or discovery shall also provide a proposed order for adoption, which appropriately incorporates the basis therefor.

(e) Oppositions to motions may be filed within ten days after the motion is filed. Oppositions shall be limited to the specific issues and allegations contained in the motion; when a motion is incorporated in an answer to a complaint, an opposition to the motion shall not address any issues presented in the answer that are not also specifically raised in the motion.

(f) No reply may be filed to an opposition to a motion.

[53 FR 11854, Apr. 11, 1988, as amended at 58 FR 25572, Apr. 27, 1993]

### § 1.728 Formal complaints not stating a cause of action; defective pleadings.

(a) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within the statutory periods of limitations of actions contained in section 415 of the Communications Act.

(b) Any other pleading filed in a formal complaint proceeding not in conformity with the requirements of the applicable rules in this part may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

[53 FR 11854, Apr. 11, 1988]

### § 1.729 Interrogatories to parties.

(a) During the time period beginning with service of the complaint and ending 30 days after the date an answer is due to be filed, any party may serve any other party written interrogatories, to be answered in writing by the party served or, if the party served is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party.

All interrogatories served on an opposing party shall be filed with the Commission at the time of service. Parties shall propound no more than 30 single interrogatories without prior Commission approval. Subparts of an interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. This procedure may be used for the discovery of any nonprivileged matter which is relevant to the pleadings. Interrogatories may not be employed for the purpose of delay, harassment or to obtain information which is beyond the scope of permissible inquiry relating to the subject matter of the pleadings.

(b) Parties on whom interrogatories are served shall respond without waiting to be ordered to do so by the Commission. Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them. The party on whom the interrogatories were served shall serve a copy of the answers and objections, if any, within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 15 days after filing its answer to the complaint, whichever period is longer. On proper motion being made, the Commission may allow a shorter or longer time for the filing of answers or objections.

(c) Where the responding party has failed to respond, or has objected, to any interrogatory, the party propounding the interrogatories may, within 15 days of the date the response was due if no response is filed or the date of service of the objection, move to compel a response thereto. The motion should state with specificity the relevance of and necessity for the requested information and must also comply with the requirements of §1.727 of this part pertaining to motions generally. Alternately, the party may request that answers to interrogatories be discussed during a status conference, pursuant to §1.733.

(d) Answers to interrogatories shall not be filed with the Commission unless so ordered by the Commission or its staff.

(e) The Commission may in its discretion limit the scope of permissible inquiry so that matters pertaining solely to the amount or computation of damages are not addressed until after a finding of liability has been made against the complainant. Inquiries that relate dually to liability and damages will be permitted during initial discovery conducted during the liability phase. If a bifurcated framework is implemented and a finding of liability is made, the parties shall, within 5 working days, inform the Commission whether they wish to defer damages discovery in order to enter negotiations for the purpose of settling their dispute. If the parties commence settlement negotiations, damages discovery shall not be undertaken prior to 20 days after release of the liability order.

[53 FR 11854, Apr. 11, 1988, as amended at 58 FR 25572, Apr. 27, 1993]

### §1.730 Other forms of discovery.

(a) If a party believes it needs to engage in some form of discovery other than by written interrogatories under §1.729, including but not limited to the production of documents, the taking of depositions, or the propounding of additional interrogatories, the party may file a motion with the Commission requesting that such discovery be permitted. The motion should state with specificity the type of discovery requested, the information which is expected to be elicited, the relevance of such information to the resolution of the proceeding, and must also comply with the requirements of §1.727 hereof, pertaining to motions generally. Such motions will not be routinely granted except for good cause shown.

(b) The party from whom the discovery is sought may file an opposition to a motion seeking discovery within 10 days after the motion is filed. No reply is permitted.

(c) Motions seeking discovery may be filed only during the period beginning with the service of a complaint and ending 30 days after the date an answer is filed or 15 days after responses to interrogatories under §1.729 are filed, whichever period is longer, except where the movant demonstrates that

the need for such discovery could not, even with due diligence, have been ascertained within this period.

(d) Documents produced through discovery shall not be filed with the Commission unless so ordered by the Commission or its staff.

[53 FR 11854, Apr. 11, 1988, as amended at 58 FR 25572, Apr. 27, 1993]

### § 1.731 Confidentiality of information produced through discovery.

(a) Any materials generated or provided by a party in response to discovery may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1)–(9). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(b) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(d) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(e) Upon termination of a formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

[58 FR 25573, Apr. 27, 1993]

### § 1.732 Other required written submissions.

(a) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence. These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citation to the record, and supported by relevant authority and analysis. Absent an order by the Commission that briefs be filed, the parties may voluntarily submit briefs in accordance with the provisions of paragraphs (b) through (e) of this section.

(b) In cases when discovery is not conducted, briefs shall be filed concurrently by both complainant and defendant within 90 days from the date a complaint is served. Such briefs shall be no longer than 35 pages.

(c) In cases when discovery is conducted, briefs shall be filed concurrently by both complainant and defendant at such time designated by the staff, typically within 30 days after discovery is completed. Such briefs shall be no longer than 50 pages.

(d) Reply briefs may be submitted by either party within 20 days from the date initial briefs are due. Reply briefs shall be no longer than 20 pages in cases when discovery is not conducted, and 30 pages in cases when discovery is conducted.

(e) Briefs containing information which is claimed by an opposing or third party to be proprietary under §1.731 shall be submitted to the Commission in confidence pursuant to the requirements of §0.459 of this chapter and clearly marked ''Not for Public Inspection.'' An edited version removing all proprietary data shall also be filed with the Commission for inclusion in the public file. Edited versions shall be filed within five days from the date the unedited brief is submitted, and served on opposing parties.

(f) Either on its own motion or upon proper motion by a party, the Commission may establish other deadlines or page limits for briefs.

(g) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

[53 FR 11855, Apr. 11, 1988. Redesignated and amended at 58 FR 25573, Apr. 27, 1993]

### §1.733 Status conference.

(a) In any complaint proceeding, the Commission may in its discretion direct the attorneys and/or the parties to appear before it for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, or of additional pleadings or evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity and extent of discovery, including objections to interrogatories or requests for production of documents;

(6) The need and schedule for filing briefs, and the date for further conferences; and

(7) Such other matters that may aid in the disposition of the complaint.

(b) While a conference normally will be scheduled after the answer has been filed, any party may request that a conference be held at any time after the complaint has been filed.

(c) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to undertake affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within 10 days from the date of the written memorialization unless the staff designates a later deadline.

(d) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(e) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

[53 FR 11855, Apr. 11, 1988. Redesignated and amended at 58 FR 25573, Apr. 27, 1993]

### §1.734 Specifications as to pleadings, briefs, and other documents; subscription.

(a) All papers filed in any formal complaint proceeding must be drawn in conformity with the requirements of §§1.49 and 1.50.

(b) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate

transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(c) The original of all pleadings and other submissions filed by any party shall be signed by that party, or by the party's attorney. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Except when otherwise specifically provided by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose.

[53 FR 11855, Apr. 11, 1988. Redesignated at 58 FR 25573, Apr. 27, 1993]

### § 1.735 Copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named carrier; such actions may not be brought against multiple defendants unless the defendant carriers are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant must file an original plus three copies of the complaint, accompanied by the correct fee, in accordance with subpart G of this part. See 47 CFR 1.1105(1)(c). However, if a complaint is addressed against multiple defendants, complainant shall pay separate fee and supply three additional copies of the complaint for each additional defendant.

(c) Generally, a separate file is set up for each defendant. An original plus two copies shall be filed of all pleadings and documents, other than the complaint, for each file number assigned.

(d) The Commission will serve a copy of any formal complaint filed with it on the named defendant, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy the complaint or to answer the complaint in writing within the time specified in the notice.

(e) All subsequent pleadings and briefs filed in any formal complaint proceeding, including any supplemental, amended, or cross complaint, as well as all letters, documents or other written submissions, shall be served by the filing party on all other parties to the proceeding, together with a proof of such service in accordance with the requirements of § 1.47.

(f) The parties to any complaint proceeding may be required to file additional copies of any or all papers filed in the proceeding.

[53 FR 11855, Apr. 11, 1988. Redesignated and amended at 58 FR 25573, 25574, Apr. 27, 1993]

## APPLICATIONS

### § 1.741 Scope.

The general rules relating to applications contained in §§ 1.742 through 1.748 apply to all applications filed by carriers except those filed by public correspondence radio stations pursuant to parts 80, 87, and 101 of this chapter, and those filed by common carriers pursuant to part 25 of this chapter. Parts 21 and 101 of this chapter contain general rules applicable to applications filed pursuant to these parts. For general rules applicable to applications filed pursuant to parts 80 and 87 of this chapter, see such parts and subpart F of this part. For rules applicable to applications filed pursuant to part 25, see said part.

[61 FR 26670, May 28, 1996]

### § 1.742 Place of filing, fees, and number of copies.

All applications which do not require a fee shall be filed at the Commission's main office in Washington, DC., Attention: Office of the Secretary. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the

Common Carrier Bureau. All applications accompanied by a fee payment should be filed with the Commission's lockbox bank in accordance with §1.1105, Schedule of Fees. The number of copies required for each application and the nonrefundable processing fees and any applicable regulatory fees (see subpart G of this part) which must accompany each application in order to qualify it for acceptance for filing and consideration are set forth in the rules in this chapter relating to various types of applications. However, if any application is not of the type covered by this chapter, an original and two copies of each such application shall be submitted.

[59 FR 30998, June 16, 1994]

### §1.743 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments thereto, and related statements of fact required by the Commission must be signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer or duly authorized employee, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of eligible government entities such as states and territories of the United States, their political subdivisions, the District of Columbia, and units of local government, including incorporated municipalities, must be signed by a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

(c) Only the original of applications, amendments, or related statements of fact need be signed; copies may be conformed.

(d) Applications, amendments, and related statements of fact need not be signed under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code, Title 18, section 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to section 312(a)(1) of the Communications Act of 1934, as amended.

(e) ''Signed,'' as used in this section, means an original hand-written signature, except that by public notice in the FEDERAL REGISTER the Common Carrier Bureau may allow signature by any symbol executed or adopted by the applicant with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

[28 FR 12450, Nov. 22, 1963, as amended at 53 FR 17193, May 16, 1988; 59 FR 59503, Nov. 17, 1994]

### §1.744 Amendments.

(a) Any application not designated for hearing may be amended at any time by the filing of signed amendments in the same manner, and with the same number of copies, as was the initial application. If a petition to deny (or to designate for hearing) has been filed, the amendment shall be served on the petitioner.

(b) After any application is designated for hearing, requests to amend such application may be granted by the presiding officer upon good cause shown by petition, which petition shall be properly served upon all other parties to the proceeding.

(c) The applicant may at any time be ordered to amend his application so as to make it more definite and certain. Such order may be issued upon motion of the Commission (or the presiding officer, if the application has been designated for hearing) or upon petition of any interested person, which petition shall be properly served upon the applicant and, if the application has been

designated for hearing, upon all parties to the hearing.

[29 FR 6444, May 16, 1964, and 31 FR 14394, Nov. 9, 1966]

### § 1.745 Additional statements.

The applicant may be required to submit such additional documents and written statements of fact, signed and verified (or affirmed), as in the judgment of the Commission (or the presiding officer, if the application has been designated for hearing) may be necessary. Any additional documents and written statements of fact required in connection with applications under Title II of the Communications Act need not be verified (or affirmed).

[29 FR 6444, May 16, 1964]

### § 1.746 Defective applications.

(a) Applications not in accordance with the applicable rules in this chapter may be deemed defective and returned by the Commission without acceptance of such applications for filing and consideration. Such applications will be accepted for filing and consideration if accompanied by petition showing good cause for waiver of the rule with which the application does not conform.

(b) The assignment of a file number, if any, to an application is for the administrative convenience of the Commission and does not indicate the acceptance of the application for filing and consideration.

### § 1.747 Inconsistent or conflicting applications.

When an application is pending or undecided, no inconsistent or conflicting application filed by the same applicant, his successor or assignee, or on behalf or for the benefit of said applicant, his successor, or assignee, will be considered by the Commission.

### § 1.748 Dismissal of applications.

(a) *Before designation for hearing.* Any application not designated for hearing may be dismissed without prejudice at any time upon request of the applicant. An applicant's request for the return of an application that has been accepted for filing and consideration, but not designated for hearing, will be deemed a request for dismissal without prejudice. The Commission may dismiss an application without prejudice before it has been designated for hearing when the applicant fails to comply or justify noncompliance with Commission requests for additional information in connection with such application.

(b) *After designation for hearing.* A request to dismiss an application without prejudice after it has been designated for hearing shall be made by petition properly served upon all parties to the hearing and will be granted only for good cause shown. An application may be dismissed with prejudice after it has been designated for hearing when the applicant:

(1) Fails to comply with the requirements of § 1.221(c);

(2) Otherwise fails to prosecute his application; or

(3) Fails to comply or justify noncompliance with Commission requests for additional information in connection with such application.

[28 FR 12450, Nov. 22, 1963, as amended at 29 FR 6445, May 16, 1964]

### § 1.749 Action on application under delegated authority.

Certain applications do not require action by the Commission but, pursuant to the delegated authority contained in subpart B of part 0 of this chapter, may be acted upon by the Telegraph Committee, the Telephone Committee, or the Chief of the Common Carrier Bureau, respectively, subject to reconsideration by the Commission.

## SPECIFIC TYPES OF APPLICATIONS UNDER TITLE II OF COMMUNICATIONS ACT

### § 1.761 Cross reference.

Specific types of applications under Title III of the Communications Act involving public correspondence radio stations are specified in parts 23, 80, 87, and 101 of this chapter.

[61 FR 26671, May 28, 1996]

### § 1.762 Interlocking directorates.

Applications under section 212 of the Communications Act for authority to hold the position of officer or director of more than one carrier subject to the

act or for a finding that two or more carriers are commonly owned shall be made in the form and manner, with the number of copies set forth in part 62 of this chapter. The Commission shall be informed of any change in status of any person authorized to hold the position of officer or director of more than one carrier, as required by part 62 of this chapter.

[52 FR 5289, Feb. 20, 1987]

### §1.763 Construction, extension, acquisition or operation of lines.

(a) Applications under section 214 of the Communications Act for authority to construct a new line, extend any line, acquire or operate any line or extension thereof, or to engage in transmission over or by means of such additional or extended line, to furnish temporary or emergency service, or to supplement existing facilities shall be made in the form and manner, with the number of copies and accompanied by the fees specified in part 63 of this chapter.

(b) In cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of the Army, the Secretary of the Navy, and the Governor of each State involved. Hearing is held if any of these persons desires to be heard or if the Commission determines that a hearing should be held. Copies of applications for certificates are filed with the regulatory agencies of the States involved.

### §1.764 Discontinuance, reduction, or impairment of service.

(a) Applications under section 214 of the Communications Act for the authority to discontinue, reduce, or impair service to a community or part of a community or for the temporary, emergency, or partial discontinuance, reduction, or impairment of service shall be made in the form and manner, with the number of copies specified in part 63 of this chapter (see also subpart G, part 1 of this chapter). Posted and public notice shall be given the public as required by part 63 of this chapter.

(b) In cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if any of these persons desires to be heard or if the Commission determines that a hearing should be held. Copies of all formal applications under this section requesting authorizations (including certificates) are filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points) and the Governor of each State involved. Copies of all applications under this section requesting authorizations (including certificates) are filed with the regulatory agencies of the States involved.

[28 FR 12450, Nov. 22, 1963, as amended at 52 FR 5289, Feb. 20, 1987]

### §1.765 Consolidation or acquisition of telephone companies.

Applications under section 221(a) of the Communications Act for authority to consolidate or acquire telephone companies shall be made in the form and manner, with the number of copies and accompanied by the fees shown in part 66 of this chapter.

### §1.766 Consolidation of domestic telegraph carriers.

(a) Applications under section 22 of the Communications Act by two or more domestic telegraph carriers for authorization to effect a consolidation or merger or by any domestic telegraph carrier to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier shall contain such information as is necessary for the Commission to act upon such application under the provisions of section 222 of the Act.

(b) These applications are acted upon by the Commission after public hearing. Reasonable notice in writing of the public hearing and an opportunity to be heard is given by the Commission to the Governor of each of the States in which any of the physical property involved in such proposed consolidation or merger is situated, to the Secretary of State, the Secretary of the Army, the Attorney General of the United

States, the Secretary of the Navy, representatives of employees where represented by bargaining representatives known to the Commission, and to such other persons as the Commission may deem advisable.

[28 FR 12450, Nov. 22, 1963, as amended at 52 FR 5289, Feb. 20, 1987]

### § 1.767 Cable landing licenses.

(a) Applications for cable landing licenses under 47 U.S.C. 34–39 and Executive Order No. 10530, dated May 10, 1954, should be filed in duplicate and in accordance with the provisions of that Executive Order. These applications should contain:

(1) The name, address and telephone number(s) of the applicant;

(2) The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;

(3) The name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;

(4) A description of the submarine cable, including the type and number of channels and the capacity thereof;

(5) A specific description of the cable landing location on the shore of the United States and in foreign countries where the cable will land (including a map). Applicants initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points to be filed by the applicant no later than 90 days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than 60 days after receipt of the specific description of the landing points.

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis, and if operation will be on a non-common carrier basis, include the ownership information required in § 63.18 (e)(6) and (h) (1) through (2) of this chapter; and

(7) Any other information that may be necessary to enable the Commission to act on their application.

(b) These applications are acted upon by the Commission after obtaining the approval of the Secretary of State and such assistance from any executive department or establishment of the Government as it may require.

(c) Original files relating to submarine cable landing licenses and applications for licenses since June 30, 1934, are kept by the Commission. Such applications for licenses (including all documents and exhibits filed with and made a part thereof, with the exception of any maps showing the exact location of the submarine cable or cables to be licensed) and the licenses issued pursuant thereto, with the exception of such maps, shall, unless otherwise ordered by the Commission, be open to public inspection in the offices of the Commission in Washington, D.C.

(d) Original files relating to licenses and applications for licenses for the landing operation of cables prior to June 30, 1934, were kept by the Department of State, and such files prior to 1930 have been transferred to the Executive and Foreign Affairs Branch of the General Records Office of the National Archives. Requests for inspection of these files should, however, be addressed to the Federal Communications Commission, Washington, D.C., 20554; and the Commission will obtain such files for a temporary period in order to permit inspection at the offices of the Commission.

(e) A separate application shall be filed with respect to each individual cable system for which a license is requested, or for which modification or amendment of a previous license is requested.

(f) Applicants shall disclose to any interested member of the public, upon written request, accurate information concerning the location and timing for the construction of a submarine cable system authorized under this section. This disclosure shall be made within 30 days of receipt of the request.

[28 FR 12450, Nov. 22, 1963, as amended at 52 FR 5289, Feb. 20, 1987; 61 FR 15726, Apr. 9, 1996]

TARIFFS

### §1.771 Filing.

Schedules of charges, and classifications, practices, and regulations affecting such charges, required under section 203 of the Communications Act shall be constructed, filed, and posted in accordance with and subject to the requirements of part 61 of this chapter.

### §1.772 Application for special tariff permission.

Applications under section 203 of the Communications Act for special tariff permission shall be made in the form and manner, with the number of copies set out in part 61 of this chapter.

[52 FR 5289, Feb. 20, 1987]

### §1.773 Petitions for suspension or rejection of new tariff filings.

(a) *Petition*—(1) *Content.* Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision thereof shall specify the filing's Federal Communications Commission tariff number and carrier transmittal number, the items against which protest is made, and the specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the Communications Act. No petition shall include a prayer that it also be considered a formal complaint. Any formal complaint shall be filed as a separate pleading as provided in §1.721.

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision of such a publication, must specify the pertinent Federal Communications Commission tariff number and carrier transmittal number; the matters protested; and the specific reasons why the tariff warrants investigation, suspension, or rejection. When a single petition asks for more than one form of relief, it must separately and distinctly plead and support each form of relief. However, no petiton may ask that it also be considered a formal complaint. Formal complaints must be separately lodged, as provided in §1.721.

(ii) For purposes of this section, tariff filings by nondominant carriers will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That the harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(iii) For the purpose of this section, any tariff filing by a local exchange carrier filed pursuant to the requirements of §61.39 will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows that the cost and demand studies or average schedule information was not provided upon reasonable request. If such a showing is not made, then the filing will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(iv) For the purposes of this section, tariff filings made pursuant to §61.49(b) by carriers subject to price cap regulation will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition shows that the support information required in §61.49(b) was not provided, or unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That the suspension would not substantially harm other interested parties;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(2) *When filed.* All petitions seeking investigation, suspension, or rejection of a new or revised tariff filing shall meet the filing requirements of this paragraph. In case of emergency and within the time limits provided, a telegraphic request for such relief may be sent to the Commission setting forth succinctly the substance of the matters required by paragraph (a)(1) of this section. A copy of any such telegraphic request shall be sent simultaneously to the Chief, Common Carrier Bureau, the Chief, Tariff Division, and the publishing carrier. Thereafter, the request shall be confirmed by petition filed and served in accordance with § 1.773(a)(4).

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filed pursuant to section 204(a)(3) of the Communications Act made on 7 days notice shall be filed and served within 3 calendar days after the date of the tariff filing.

(ii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 6 days after the date of the tariff filing.

(iii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 7 days after the date of the tariff filing.

(iv) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 15 days after the date of the tariff filing.

(v) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing mode on 90 or more days notice shall be filed and served within 25 days after the date of the tariff filing.

(3) *Computation of time.* Intermediate holidays shall be counted in determining the above filing dates. If the date for filing the petition falls on a holiday, the petition shall be filed on the next succeeding business day.

(4) *Copies, service.* An original and four copies of each petition shall be filed with the Commission as follows: the original and three copies of each petition shall be filed with the Secretary, FCC room 222, 1991 M Street, NW., Washington, DC 20554; one copy must be delivered directly to the Commission's copy contractor, International Transcription Service, Inc., 2100 M St., NW., Suite 140, Washington, DC. Additional, separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; the Chief, Competitive Pricing Division; and the Chief, Tariff and Price Analysis Branch of the Competitive Pricing Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy of the petition must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on more than 15 days notice may be served on the filing carrier by mail.

(b) *Reply*—(1) *When filed.* A publishing carrier's reply to a petition for relief from a tariff filing shall be filed in accordance with the following periods:

(i) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filed pursuant to section 204(a)(3) of the Act made on 7 days notice shall be filed and served within 2 days after the date the petition is filed with the Commission.

(ii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 3 days after the date the petition is due to be filed with the Commission.

(iii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 4 days after service of the petition.

(iv) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 5 days after service of the petition.

(v) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 8 days after service of the petition.

(vi) Where all petitions against a tariff filing have not been filed on the same day, the publishing carrier may file a consolidated reply to all the petitions. The time for filing such a consolidated reply will begin to run on the last date for timely filed petitions, as fixed by paragraphs (a)(2) (i) through (iv) of this section, and the date on which the consolidated reply is due will be governed by paragraphs (b)(1) (i) through (iv) of this section.

(2) *Computation of time.* Intermediate holidays shall be counted in determining the 3-day filing date for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice. Intermediate holidays shall not be counted in determining filing dates for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice. When a petition is permitted to be served upon the filing carrier by mail, an additional 3 days (counting holidays) may be allowed for filing the reply. If the date for filing the reply falls on a holiday, the reply may be filed on the next succeeding business day.

(3) *Copies, service.* An original and four copies of each reply shall be filed with the Commission, as follows: the original and three copies must be filed with the Secretary, FCC room 222, 1919 M Street, NW., Washington, DC 20554; one copy must be delivered directly to the Commission's Copy contractor, International Transcription Service, Inc., 2100 M St., NW/. Suite 140, Washington, DC. Additional separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; the Chief, Competitive Division; and the Chief, Tariff and Price Analysis Branch of the Competitive Pricing Division and the petitioner. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served on petitioners personally or via facsimile. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on more than 15 days notice may be served upon petitioner personally, by mail or via facsimile.

[45 FR 64190, Sept. 29, 1980, as amended at 49 FR 40876, Oct. 18, 1984; 49 FR 49466, Dec. 20, 1984; 52 FR 26682, July 16, 1987; 54 FR 19840, May 8, 1989; 58 FR 17529, Apr. 5, 1993; 58 FR 51247, Oct. 1, 1993; 62 FR 5777, Feb. 7, 1997]

## CONTRACTS, REPORTS, AND REQUESTS REQUIRED TO BE FILED BY CARRIERS

### §1.781 Requests for extension of filing time.

Requests for extension of time within which to file contracts, reports, and requests referred to in §§1.783 through 1.814 shall be made in writing and may be granted for good cause shown.

## CONTRACTS

### §1.783 Filing.

Copies of carrier contracts, agreements, concessions, licenses, authorizations or other arrangements, shall be filed as required by part 43 of this chapter.

## FINANCIAL AND ACCOUNTING REPORTS AND REQUESTS

### §1.785 Annual financial reports.

(a) An annual financial report shall be filed by telephone carriers and affiliates as required by part 43 of this chapter on form M.

(b) Verified copies of annual reports filed with the Securities and Exchange Commission on its Form 10–K, Form 1–MD, or such other form as may be prescribed by that Commission for filing of equivalent information, shall be filed annually with this Commission by each person directly or indirectly controlling any communications common carrier in accordance with part 43 of this chapter.

(c) Carriers having separate departments or divisions for carrier and noncarrier operations shall file separate

supplemental annual reports with respect to such carrier and non-carrier operations in accordance with part 43 of this chapter.

[28 FR 12450, Nov. 22, 1963, as amended at 31 FR 747, Jan. 20, 1966; 47 FR 50697, Nov. 9, 1982; 49 FR 36503, Sept. 18, 1984; 50 FR 41152, Oct. 9, 1985; 58 FR 36143, July 6, 1993]

**§ 1.786 [Reserved]**

**§ 1.787 Reports of proposed changes in depreciation rates.**

Carriers shall file reports regarding proposed changes in depreciation rates as required by part 43 of this chapter.

**§ 1.788 Reports regarding pensions and benefits.**

Carriers shall file reports regarding pensions and benefits as required by part 43 of this chapter.

**§ 1.789 Reports regarding division of international telegraph communication charges.**

Carriers engaging in international telegraph communication shall file reports in regard to the division of communication charges as required by part 43 of this chapter.

**§ 1.790 Reports relating to traffic by international carriers.**

Carriers shall file periodic reports regarding international point-to-point traffic as required by part 43 of this chapter.

[57 FR 8579, Mar. 11, 1992]

**§ 1.791 Reports and requests to be filed under part 32 of this chapter.**

Reports and requests shall be filed either periodically, upon the happening of specified events, or for specific approval by class A and class B telephone companies in accordance with and subject to the provisions of part 32 of this chapter.

[55 FR 30461, July 26, 1990]

**§ 1.795 Reports regarding interstate rates of return.**

Carriers shall file reports regarding interstate rates of return on FCC Form 492 as required by part 65 of this chapter.

[52 FR 274, Jan. 5, 1987]

SERVICES AND FACILITIES REPORTS

**§ 1.802 Reports relating to continuing authority to supplement facilities or to provide temporary or emergency service.**

Carriers receiving authority under part 63 of this chapter shall file quarterly or semiannual reports as required therein.

**§ 1.803 Reports relating to reduction in temporary experimental service.**

As required in part 63 of this chapter, carriers shall report reductions in service which had previously been expanded on an experimental basis for a temporary period.

**§ 1.805 Reports relating to service by carriers engaged in public radio service operations.**

Monthly and quarterly reports must be filed with the Commission in connection with certain fixed public radio service operations. No form is prescribed. A complete description of the contents of these reports is contained in part 23 of this chapter.

MISCELLANEOUS REPORTS

**§ 1.811 Reports regarding amendments to charters, by-laws and partnership agreements of carriers engaged in domestic public radio services.**

Amendments to such documents shall be reported and filed in accordance with part 21 of this chapter.

**§ 1.813 Reports of negotiations regarding foreign communication matters.**

Pursuant to the requirements of part 43 of this chapter, carriers engaging or participating in foreign communications shall file monthly reports covering negotiations conducted.

**§ 1.814 Reports regarding free service rendered the Government for national defense.**

Carriers rendering free service in connection with the national defense to any agency of the United States Government shall file reports in accordance with part 2 of this chapter.

### §1.815 Reports of annual employment.

(a) Each common carrier licensee or permittee with 16 or more full time employees shall file with the Commission, on or before May 31 of each year, on FCC Form 395, an annual employment report.

(b) A copy of every annual employment report filed by the licensee or permittee pursuant to the provisions herein; and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the permittee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated herein by reference are open for public inspection at the offices of the Commission.

(c) *Cross references*—(1) *Applicability of cable television EEO reporting requirements to MDS and MMDS facilities,* see §21.920 of this chapter.

(2) *Applicability of cable television EEO reporting requirements for FSS facilities,* see §25.601 of this chapter.

[35 FR 12894, Aug. 14, 1970, as amended at 36 FR 3119, Feb. 18, 1971; 58 FR 42249, Aug. 9, 1993]

GRANTS BY RANDOM SELECTION

### §1.821 Scope.

The provisions of §§1.822, 1.823, 1.824 and 1.825 apply as indicated to those applications for permits, licenses or authorizations in the Public Mobile Services, Multichannel Multipoint Distribution Service and Digital Electronic Message Service for which action may be taken by the Chief, Common Carrier Bureau pursuant to delegated authority.

[59 FR 59503, Nov. 17, 1994]

### §1.822 General selection procedures.

(a) Mutually exclusive applications for permits and licenses in the services specified in §1.821 may be designated for random selection according to the procedures established for each service. Following the random selection, the Commission shall determine whether the applicant is qualified to receive the permit or license. If, after reviewing the tentative selectee's application and pleadings properly filed against it, the Commission determines that a substantial and material question of fact exists, it shall designate the qualifying issue(s) for an expedited hearing.

(b) Expedited hearing procedures. (1) Hearings may be conducted by the Commission or an Administrative Law Judge. In the case of a question which requires oral testimony for its resolution, the hearing will be conducted by an Administrative Law Judge.

(2) Parties have ten (10) days from publication in the FEDERAL REGISTER of the hearing designation order to file notices of appearance.

(3) When the Commission, under §1.221, issues an order stating the time, place, and nature of the hearing, this order shall instruct the applicant to submit its direct case in writing within thirty (30) days from the order's release date, or as otherwise specified in the order. The direct written case must set forth all those facts and circumstances related to the issues in the designation order. Documentary evidence upon which the applicant relies must be attached. Each exhibit must be numbered and must be accompanied by an affidavit from someone who has personal knowledge of the facts in the submission and who attests to the truth of the submission.

(4) The order will also specify those petitioners that directly raised an issue which was designated and will inform these parties of their opportunity to submit a written rebuttal case within twenty (20) days after the direct case is due. The procedures in paragraph (b)(3) of this section will apply as to documentary evidence, exhibits, and affidavits.

(5) Appeal of initial decisions rendered by an Administrative Law Judge shall lie with the Commission.

[48 FR 27201, June 13, 1983. Redesignated and amended at 50 FR 5991, Feb. 13, 1985]

### §1.823 Random selection procedures for the Public Mobile Services.

(a) *General Procedures.* If there are mutually exclusive applications for an initial license, the Commission may use a random selection process. Each such random selection shall be conducted under the direction of the Chief of the Common Carrier Bureau. The designated Lottery Official shall select

the winning applicant from among mutually exclusive applicants. The Lottery Official may select in rank order a number of additional applicants. The number of additional applicants selected will be determined by the Chief of the Common Carrier Bureau and the Managing Director. No preferences shall be awarded to participants. Following the random selection, the Commission shall announce the tentative selectee and determine whether this applicant is qualified to receive the license. If the Commission determines that the tentative selectee is qualified, it shall grant the application.

(b) *Petitions to Deny*—(1) *Public Mobile Services other than the Cellular Radiotelephone Service.* Petitions to Deny and other pleadings may be filed against applications but are not reviewed prior to the random selection process. Petitions filed against tentative selectee applications are reviewed after the tentative selectee is announced.

(2) [Reserved]

(3) *Cellular Radiotelephone Service, unserved areas.* In the Phase I licensing phase, petitions to deny must be filed within 30 days after the date of public notice announcing the tentative selectee. If the tentative selectee is qualified, the Commission will grant its application and dismiss the losing applications. If the tentative selectee's application cannot be granted, it will be either designated for hearing or dismissed. If the winning application is dismissed or ultimately denied, another lottery will be held to select an application from the remaining applications. In the Phase II licensing phase, petitions to deny must be filed within 30 days from the date of public notice accepting the application for filing.

(c) *Petitions for Reconsideration.* Motions to Stay or Applications for Review may be filed only at such time as the Commission grants or denies the tentative selectee's application. The filing periods specified in the Rules shall apply for such pleadings.

[50 FR 5991, Feb. 13, 1985, as amended at 50 FR 51527, Dec. 18, 1985; 53 FR 52425, Dec. 28, 1988; 56 FR 58506, Nov. 20, 1991; 59 FR 59503, Nov. 17, 1994; 59 FR 59949, Nov. 21, 1994]

**§ 1.824 Random selection procedures for Multichannel Multipoint Distribution Service and Multipoint Distribution Service H-Channel stations.**

(a) If there are mutually exclusive applications for an initial conditional license or license, the Commission may use the random selection process to select the conditional licensee or licensee. Each such random selection shall be conducted under the direction of the Office of the Managing Director in conjunction with the Office of the Secretary. Following the random selection, the Commission shall announce the tentative selectee and determine whether the applicant is qualified to receive the conditional license or license. If the Commission determines that the tentative selectee is qualified, it shall grant the application. In the event that the tentative selectee's application is denied, a second random selection will be conducted. Petitions for Reconsideration, Motions to Stay or Applications for Review may be submitted at the time the Commission grants or denies the application of the tentative selectee. The filing periods specified in the rules shall apply for such pleadings.

(b) Competing applications for conditional licenses and licenses shall be designated for random selection in accordance with §§1.1621, 1.1622 (a), (b), (c), (d), and (e), and 1.1623. No preferences pursuant to §1.1622 (b)(2) or (b)(3) shall be granted to any MMDS or MDS H-channel applicant whose owners, when aggregated, have an ownership interest of more than 50 percent in the media of mass communication whose service areas, as set forth at §1.1622 (e)(1) through (e)(7), wholly encompass or are encompassed by the protected service area contour, computed in accordance with §21.902(d) of this chapter, for which the license or conditional license is sought.

(c) Petitions to Deny may be filed only against the tentative selectee. These petitions must be filed within 30 days of the Public Notice announcing such tentative selection. A consolidated reply may be filed within 15 days of the due date for Petitions to Deny.

[50 FR 5992, Feb. 13, 1985, as amended at 56 FR 57815, Nov. 14, 1991]

### §1.825 Random selection procedures for Digital Electronic Message Service.

If there are mutually exclusive applications for an initial permit or license for a digital termination system, the Commission may use the random selection process to select the permittee or licensee. Each such random selection shall be conducted under the direction of the Office of Managing Director in conjunction with the Office of the Secretary. The random selection shall rank order the applications. No preferences shall be awarded to participants. Following the random selection, the Commission shall announce the rank order of the applications to determine whether the first ranked tentative selectee is qualified to recieve the permit or license. If the Commission determines that the tentative selectee is qualified, it shall grant the application. The Commission shall then determine which of the alternate applications in rank order, can also be granted and whether those alternate tentative selectees are qualified to receive the permit or license. If the Commission determines that the alternate tentative selectees are qualified, it shall grant the applications.

[50 FR 45614, Nov. 1, 1985, as amended by 61 FR 26671, May 28, 1996; 62 FR 24581, May 6, 1997]

## Subpart F—Private Radio Services Applications and Proceedings

SOURCE: 28 FR 12454, Nov. 22, 1963, unless otherwise noted.

GENERAL

### §1.901 Scope.

In the case of any conflict between the rules set forth in this subpart and the rules set forth in part 13 of this chapter or the rules set forth for specific services in parts 80 through 101 of this chapter, the rules in this subpart shall govern.

[61 FR 26671, May 28, 1996]

GENERAL FILING REQUIREMENTS

### §1.911 Applications required.

(a) Except as provided in paragraph (b) of this section, station licenses as defined in section 3(bb) of the Communications Act; operator licenses or modifications of renewals thereof; assignments of station licenses or any rights thereunder; and consent to transfer control of a corporation holding a license, shall be granted only upon written and signed application.

(b) In cases (1) of an emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) of a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged, when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, or (3) of emergency where the Commission finds, in these services, that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission may grant station licenses, or modifications or renewals thereof, without the filing of a formal application; but no such authorization shall be granted for or continue in effect beyond the period of the emergency or war requiring it. The procedure to be followed for requests submitted under the provisions of this paragraph is the same as for obtaining special temporary authority under §1.925.

(c) In case of vessels at sea, the Commission may issue by cable, telegraph, or radio a permit for the operation of a station until the vessel returns to a port of the continental United States.

(d) Canadian licensees desiring to operate in the United States under the terms of Articles 2 and 3 of the Convention between the United States and Canada concerning Operation of Certain Radio Equipment or Stations (which entered into force May 15, 1952) shall make application upon FCC Form 410, which shall be filed with the Secretary, Federal Communications Commission, Washington, DC, 20554. Forms

may be obtained from the FCC Secretary, any field office of the Commission, or from the Controller of Telecommunications, Department of Transport, Ottawa, Canada.

(e) An alien amateur desiring to operate in the United States under provisions of sections 303(1)(2) and 310(a) of the Communications Act of 1934, as amended, and under the terms of a bilateral agreement in force between the applicant's country and the United Staters concluded pursuant to the provisions of Pub. L. 88–313, must make application on FCC Form 610–A,[1] which must be filed with the Commission's offices in Gettysburg, Pennsylvania (Federal Communications Commission, Gettysburg, Pennsylvania 17325). Forms may be obtained from the Secretary, the Commission's offices in Gettysburg, Pennsylvania, any field office of the Commission and, in some instances, from United States missions abroad.

(Sec. 308, 48 Stat. 1084, as amended; 47 U.S.C. 308)

[28 FR 12454, Nov. 22, 1963, as amended at 34 FR 19419, Dec. 9, 1969; 37 FR 15928, Aug. 8, 1972; 40 FR 5365, Feb. 5, 1975; 49 FR 30943, Aug. 2, 1984]

### § 1.912 Where applications are to be filed.

(a) Each application for a new amateur service operator/primary station license and each application involving a change in operator class must be submitted to the volunteer examiners (VEs) administering the qualifying examination. See § 97.17(c) of this chapter. The VEs are required to submit the applications of persons passing their respective examinations for amateur operator licenses to the Volunteer-Examiner Coordinator (VEC). All other applications for amateur service licenses must be submitted to FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

(b) All applications for private land mobile licenses which require both frequency coordination and fees as set forth at part 1, subpart G of this chapter shall first be sent to the certified coordinator for the radio service or frequency group concerned. After the appropriate frequency coordination and attachment of the statutory fee, such applications shall be forwarded to the appropriate address in accordance with § 0.401(b) of the rules.

(1) All applications for private land mobile licenses that require frequency coordination but not a fee shall be sent to the certified frequency coordinator for the radio service or frequency group concerned. After appropriate frequency coordination, such applications must be forwarded to the Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245.

(2) All applications for private land mobile licenses that require a fee but not frequency coordination shall be sent to the appropriate address in accordance with § 0.401(b) of the rules.

(3) All applications for private land mobile licenses that do not require either frequency coordination or a fee must be sent to Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245.

(c) Formal applications for ship station licenses for use of radiotelephone or radar transmitting apparatus or both, and applications for modification of such licenses shall be filed on FCC Form 506 and in accordance with the instructions on that form.

(d) Formal applications for ship station licenses (FCC Forms 506 and 405–B), for aircraft station licenses (FCC Forms 404 and 405–B), and applications for Maritime Coast and Aviation Ground Stations, requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 1.1102 of the rules.

(e) Applicants submitting long-form applications pursuant to competitive bidding procedures (see § 1.2107(c)) must mail or otherwise deliver their application to: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Room 222, Washington, DC 20554, Attention: Auction Application Processing Section.

(f) All other applications that do not require fees must be filed with the Commission's offices in Gettysburg, Pennsylvania. Address the applications to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245. Applications

[1] Form filed as part of original document.

requiring fees as set forth at part 1, subpart G of of this chapter must be filed in accordance with §0.401(b) of the rules.

(Sec. 308, 48 Stat. 1084, as amended; 47 U.S.C. 308; secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[47 FR 9208, Mar. 4, 1982, as amended at 47 FR 15334, Apr. 9, 1982; 48 FR 45658, Oct. 6, 1983; 52 FR 10229, Mar. 31, 1987; 56 FR 64714, Dec. 12, 1991; 58 FR 30717, May 27, 1993; 59 FR 543, Jan. 5, 1994; 59 FR 24957, May 13, 1994]

### §1.913 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments thereto, and related statements of fact required by the Commission must be signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, director, or duly authorized employee, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of eligible government entities such as states and territories of the United States, their political subdivisions, the District of Columbia, and units of local government, including unincorporated municipalities, must be signed by a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or absence from the United States, or by applicant's designated vessel master when a temporary permit is requested for a vessel. The attorney shall, when applicable, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's or master's belief only (rather than knowledge), the attorney or master shall separately set forth the reasons for believing that such statements are true.

(c) Only the original of applications, amendments, and related statements of fact need be signed.

(d) Applications, amendments, and related statements of fact need not be signed under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code, Title 18, section 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to section 312(a)(1) of the Communications Act of 1934, as amended.

(e) ''Signed,'' as used in this section, means an original hand-written signature, except that by public notice in the FEDERAL REGISTER the Private Radio Bureau may allow signature by any symbol executed or adopted by the applicant with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

(Sec. 308, 48 Stat. 1084, as amended; 47 U.S.C. 308)

[28 FR 12450, Nov. 22, 1963, as amended at 43 FR 27991, June 28, 1978; 49 FR 30944, Aug. 2, 1984; 58 FR 21406, Apr. 21, 1993]

### §1.914 Full disclosures.

Each application shall contain full and complete disclosures with regard to the real party or parties in interest and as to all matters and things required to be disclosed by the application forms.

(Sec. 308, 48 Stat. 1084, as amended; 47 U.S.C. 308)

### §1.916 Repetitious applications.

Where the Commission has, for any reason, denied an application for a new station or for any modification of services or facilities, dismissed such application with prejudice, or revoked the license for a radio station in the Private Radio Services, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its 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.

[28 FR 12454, Nov. 22, 1963, as amended at 44 FR 39181, July 5, 1979]

**§ 1.918 Amendment of applications.**

(a) Any amendment to an application shall be signed and submitted in the same manner and with the same number of copies as was the original application.

(b) Any application may be amended as a matter of right prior to the grant of that application. However, an application which is substantially amended, as defined by § 1.962(c), will be considered a newly filed application as of the date of the filing of the amendment.

(c) An application to amend an application after it has been designated for hearing will be considered only upon written petition addressed to the hearing examiner and served upon the parties of record, and will be granted only for good cause shown. A petition which requests a substantial change or to change the applicant's position, or the issues, in a hearing, must be accompanied by a signed statement of a person with knowledge of the facts as to whether or not consideration has been promised to or received by the petitioner, directly or indirectly, in connection with the filing of such petition for amendment. If consideration has been promised, or received, the statement shall set forth in full detail all the relevant facts with sufficient itemization of the consideration to enable the examiner to determine to what extent, if any, that the consideration represents only the reasonable costs of prosecuting the petitioner's application.

(d) A request to amend an application after it has been designated for random selection pursuant to § 1.972 will be considered only upon written petition addressed to the Chief, Private Radio Bureau and will be granted only for good cause shown. A petition which requests a substantial change in the application or which affects the lottery probabilities of other applicants must be accompanied by a signed statement of a person with knowledge of the relevant facts and must specify with particularity why such change is necessary and whether or not consideration has been promised to or received by the petitioner, directly or indirectly, in connection with the filing of such petition for amendment. If consideration has been promised or received, the statement shall set forth all the relevant facts with sufficient detail to enable the Chief, Private Radio Bureau to determine whether and to what extent, if any, the consideration represents only the reasonable costs of prosecuting the petitioner's application.

(e) The Commission (or the presiding officer, if the application has been designated for hearing) may, upon its own motion or upon motion of any party to a proceeding, order the applicant to amend the application so as to make the same more definite and certain, and may require an applicant to submit such documents and written statements of fact as in its judgment may be necessary.

(Sec. 308, 48 Stat. 1084, as amended; 47 U.S.C. 308)

[28 FR 12454, Nov. 22, 1963, as amended at 37 FR 13984, July 15, 1972; 48 FR 27201, June 13, 1983; 49 FR 30944, Aug. 2, 1984]

APPLICATION FORMS AND PARTICULAR FILING REQUIREMENTS

**§ 1.921 Procedure for obtaining a radio station authorization and for commencement of operation.**

(a) Persons desiring to install and operate radio transmitting equipment should first submit an application for a radio station authorization in accordance with the rules for the particular service. A list of all application forms used by Private Radio Services Bureau is contained in § 1.922. Each form contains appropriate instructions concerning the number of required copies, where it may be filed, and the services in which it is intended to be used.

(b) Each application shall include all information called for by the particular form on which the application is required to be filed unless the information called for is inapplicable, in which case that fact shall be indicated.

(c) In some cases equipment and service tests are required before an authorized station may be placed in regular operation. Reference should be made to the specific service regarding these provisions.

(Sec. 308, 48 Stat. 1084, as amended; 47 U.S.C. 308)

[28 FR 12454, Nov. 22, 1963, as amended at 44 FR 39181, July 5, 1979]

### §1.922 Forms to be used.

| FCC form | Title |
|---|---|
| 175 | Application To Participate in an FCC Auction. |
| 175–S | Supplemental Application To Participate in an FCC Auction. |
| 402 | Application for Microwave Station Authorization in the Safety and Special Radio Services. |
| 402–10 | Instructions for Completion of FCC Form 402. |
| 402–A | Annual Report of Licensees of Microwave and Other Fixed Stations When Such Facilities Are Used Cooperatively With Other Persons. |
| 402–R | Renewal Notice and Certification in the Private Operational-Fixed Microwave Radio Services. |
| 404 | Application for Aircraft Radio Station License. |
| 404–A | Temporary Aircraft Radio Station Operating Authority. |
| 405–A | Application for Renewal of Station License. |
| 405–B | License Expiration Notice and/or Renewal Application. |
| 406 | Application for Ground Station Authorization in the Aviation Services. |
| 410 | Registration of Canadian Radio Station Licensee and Application for Permit to Operate. |
| 410–B | Application for Permit To Operate a Canadian General Radio Station in the United States. |
| 452–R | Application for Renewal of Coast and Ground Services. |
| 480 | Application for Civil Air Patrol Radio Station Authorization. |
| 490 | Application for Assignment or Transfer of Control. |
| 503 | Application for Land Radio Station License in the Maritime Services. |
| 506 | Application for Ship Radio Station License. |
| 506–A | Temporary Operating Authority, Ship Radio Station License and Restricted Radiotelephone Operator Permit. |
| 525 | Application for Disaster Communications Radio Station Construction Permit and License. |
| 572 | Temporary Permit To Operate a Business Radio Station. |
| 572C | Conditional Temporary Authorization To Operate a part 90 Radio Station. |
| 574 | Application for Radio Station Authorization in the General Mobile Radio Services. |
| 574–R | Application for Renewal of Radio Station License. |
| 574–T | Temporary Permit To Operate a General Mobile Radio Service System. |
| 577 | Temporary Permit To Operate a Part 90 Radio Station. |
| 600 | Application for Mobile Radio Service Authorization. |
| 610 | Application for Amateur Radio Station and/or Operator License. |
| 610–A | Application for Alien Amateur Radio Licensee for Permit To Operate in the United States. |
| 610–B | Application for Amateur Club, Military Recreation, or Radio Amateur Civil Emergency Service Station License. |
| 660–B | Interim Amateur Permit. |
| 602 | Application for Consent to Assignment of Radio Station Construction Permit or License (For Stations in Services Other Than Broadcast). |
| 703 | Application for Consent To Transfer of Control of Corporation Holding Construction Permit or Station License (For Station in Services Other Than Broadcast). |
| 714 | Supplement to Application for New or Modified Radio Station Authorization (Concerning Antenna Structure Notification to FAA). |
| 820 | Application for Exemption from Ship Radio Station Requirements. |
| 845 | Amateur Code Credit Certificate. |
| 1046 | Assignment of Authorization. |

(Secs. 4, 5, 303, 308, 48 Stat. 1066, 1068, 1082, 1084, as amended; 47 U.S.C. 154, 155, 303, 308; secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[59 FR 59949, Nov. 21, 1994]

### §1.923 Waiver of construction permit requirement.

(a) A construction permit is not required for any station in the Private Radio Services. However, certain private radio facilities must be constructed within the time periods specified in part 90. See, however, §1.1311(c).

(b) Licensees must apply for modification of station license for any antenna change which would be inconsistent with the terms of the station authorization or for which notification is required to be given to the Federal Aviation Administration by that agency. Part 17 of this chapter described the notification criteria.

[34 FR 9283, June 12, 1969, as amended at 48 FR 9271, Mar. 4, 1983]

### §1.924 Assignment or transfer of control, voluntary and involuntary.

(a)(1) Radio station licenses are not transferable; however, except for those set forth in paragraph (a)(2) of this section, they may be assigned. Licenses may be assigned whenever there is a change of ownership of an authorized radio station, for example, if the radio communication equipment is sold with a business. The new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

(2) Licenses for stations in the Amateur, Aviation (aircraft), Personal, and Maritime (ship) Radio Services cannot be assigned. Whenever there is a change of ownership of one of these latter stations, the new owner must apply for a new license. Upon receipt of the new license, the former license must be surrendered for cancellation.

(b)(1) Application for consent to voluntary assignment of a license, or for consent to voluntary transfer of control of a corporation holding a license, must be filed with the Commission at least 60 days prior to the contemplated effective date of assignment or transfer of control.

(2) The following application forms should be used:

(i) *FCC Form 600.* For assignment of station authorization in services under part 90 of this chapter, except as provided in subparagraph (ii). Attached thereto shall be an executed Form 1046 or a signed letter from proposed assignor stating the desire to assign the current authorization in accordance with the rules governing the particular radio service involved. Applications for consent to assign authorizations of stations operating in the 806–821 and 851–866 MHz bands shall be accompanied by FCC Form 574–A. Applications for assignment of authorizations for stations operating on frequencies below 27.5 MHz shall be accompanied by FCC Form 574–B.

(ii) *FCC Form 402.* For assignment of station authorizations in the Private Operational Fixed Microwave Service (part 101 of this chapter). Attached thereto shall be an executed Form 1046 or a signed letter from proposed assignor stating the assignor's desire to assign the current authorization in accordance with the rules governing the particular service involved.

(iii) *FCC Form 406.* For assignment of ground station authorizations in the Aviation Services, except as provided in paragraph (b)(2)(ii) of this section.

(iv) *FCC Form 503.* For assignment of coast station authorizations in the Maritme Services and Alaska-Public Fixed Stations.

(v) [Reserved]

(vi) *FCC Form 703.* For consent to transfer control of a corporation holding any type of part 90 license except a license to provide commercial mobile radio service.

(vii) *FCC Form 490.* For consent to transfer control of a corporation holding a part 90 license to provide commercial mobile radio service.

(c)(1) In the event of the death or legal disability of a permittee or licensee, a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee, the Commission shall be notified in writing promptly of the occurrence of such death or legal disability.

(2) Within 30 days after the occurrence of such death or legal disability (except in the case of a ship or amateur station), application shall be filed for consent to involuntary assignment of such permit or license, or for involuntary transfer of control of such corporation, to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved. The procedure and forms to be followed are the same as those specified in paragraph (b) of this section.

(3) In the case of stations in the Amateur, Aviation (aircraft), Personal, and Maritime (ship) Radio Services, involuntary assignment of licenses will not be made; such licenses shall be surrendered for cancellation upon the death or legal disability of the licensee.

(d) An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

(Sec. 310, 48 Stat. 1086, as amended; 47 U.S.C. 310)

[28 FR 12454, Nov. 22, 1963, as amended at 31 FR 2600, Feb. 10, 1966; 36 FR 19439, Oct. 6, 1971; 36 FR 21679, Nov. 12, 1971; 42 FR 8327, Feb. 9, 1977; 44 FR 31651, June 1, 1979; 45 FR 55201, Aug. 19, 1980; 47 FR 57051, Dec. 22, 1982; 48 FR 8455, Mar. 1, 1983; 49 FR 30944, Aug. 2, 1984; 51 FR 2703, Jan. 21, 1986; 59 FR 9101, Feb. 25, 1994; 59 FR 59949, Nov. 21, 1994; 61 FR 26671, May 28, 1996]

### § 1.925 Application for special temporary authorization, temporary permit or temporary operating authority.

(a) A licensee of or an applicant for a station in the Private Radio Services may file either a formal or informal application for a special temporary authority not to exceed 180 days for (1)

operation of a new station or (2) operation of a licensed station in a manner which is beyond the scope of that authorized by the existing license. (See § 1.962 (b)(5) and (f). The nature of the extraordinary circumstance which, in the opinion of the applicant justifies issuance of a special temporary authorization, must be fully described in the request. Information presently on file with the Commission may be included by reference, except the applications for special temporary authority under part 90 must be clear and complete within themselves and shall not rely on any pending applications. Applications for special temporary authority must be filed at least 10 days prior to the proposed operation. Applications filed less than 10 days prior to the proposed operation date will be accepted only upon a showing of good cause. In situations involving the safety of life or property or where equipment has been damaged, a request for special temporary authority may be made by telephone or telegraph provided a properly signed application is filed within 10 days of such request.

(b) [Reserved]

(c) An applicant for an Aircraft Radio Station License may operate the radio station pending issuance of an Aircraft Radio Station License by the Commission for a period of 90 days under a temporary operating authority, evidenced by a properly executed certification made on FCC Form 404–A.

(d) [Reserved]

(e) Unless the FCC otherwise prescribes, an applicant already licensed in the Amateur Radio Service, upon successfully completing the amateur radio operator examination(s) required for a higher class, may operate his/her amateur radio station consistent with the rights and privileges of that higher class for a period of one year from the date of the most recently completed examination(s) for that operator class in accord with the provisions of § 97.35.

(f) An applicant for a Ship Radio station license may operate the radio station pending issuance of the ship station authorization by the Commission for a period of 90 days, under a temporary operating authority, evidenced by a properly executed certification made on FCC Form 506–A.

(g) An applicant for a Business Radio Station license (other than an applicant who seeks to provide commercial mobile radio service as defined in part 20 of this chapter) utilizing an already authorized facility may operate the station for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 572, after the mailing of a formal application for station license together with evidence of frequency coordination, if required, to the Commission. The temporary operation of stations, other than mobile stations, within the Canadian coordination zone will be limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 20 feet (6.1 meters) above average terrain.

(h) An applicant for a radio station license under part 90, subpart S, of this chapter (other than an applicant who seeks to provide commercial mobile radio service as defined in part 20 of this chapter) to utilize an already existing Specialized Mobile Radio System (SMRS) facility or to utilize an already licensed transmitter may operate the radio station for a period of up to 180 days, under a temporary permit, evidenced by a properly executed certification of FCC Form 572 after the mailing of a formal application for station license, provided that the antenna employed by the control station is a maximum of 20 feet (6.1 meters) above a man-made structure (other than an antenna tower) to which it is affixed.

(i) An applicant for an itinerant station license, an applicant for a new private land mobile radio station license in the frequency bands below 470 MHz and in the one-way paging 929–930 MHz band or an applicant seeking to modify or acquire through assignment or transfer an existing station below 470 MHz or in the one-way paging 929–930 MHz band may operate the proposed station during the pendency of its application for a period of up to 180 days under a conditional permit. Conditional operations may commence upon the filing of a properly completed formal application that complies with § 90.127 if the application, when frequency coordination is required, is accompanied by evidence of frequency coordination in accordance with §§ 90.175

and 90.176. Operation under such a permit is evidenced by retaining with the station records the original conditional licensing 572C Certification Form containing the certifications that satisfy the provisions of § 90.159(b).

(j) An applicant for a General Mobile Radio Service system license, sharing a multiple-licensed base station used as a mobile relay station, may operate the system for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 574–T, after mailing FCC Form 574 to the Commission.

(Secs. 4(i), 303, Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303); 47 CFR 1.429)

[28 FR 12454, Nov. 22, 1963, as amended at 47 FR 56637, Dec. 20, 1982; 48 FR 4785, Feb. 3, 1983; 48 FR 24890, June 3, 1983; 48 FR 39072, Aug. 29, 1983; 48 FR 41770, Sept. 19, 1983; 48 FR 45658, Oct. 6, 1983; 49 FR 30312, July 30, 1984; 49 FR 37384, Sept. 24, 1984; 50 FR 37190, Sept. 12, 1985; 51 FR 31304, Sept. 2, 1986; 54 FR 50238, Dec. 5, 1989; 54 FR 51550, Dec. 15, 1989; 59 FR 59949, Nov. 21, 1994]

### § 1.926 Application for renewal of license.

(a) Application for renewal of a station license shall be submitted on the appropriate FCC Form indicated below:

(1) Renewal of station or system authorizations in the Private Land Mobile Radio Services (part 90 of this chapter), the General Mobile Radio Service (part 95, subpart A of this chapter), and the Interactive Video and Date Service (part 95, subpart F of this chapter) shall be submitted on FCC Form 574–R when the licensee has received that Form in the mail from the Commission. If the licensee has not received the Commission-generated Form 574–R within sixty (60) days of expiration, application for renewal of station or system license shall be submitted on FCC Form 405–A.

(2) Renewal of marine coast station authorizations (§ 80.19 of this chapter) and aviation ground station authorizations (§ 87.33 of this chapter) must be submitted on FCC Form 452–R.

(3) Renewal of aircraft radio station authorizations and ship radio station authorizations shall be submitted on FCC Form 405–B.

(4) Renewal of an amateur operator license or a combined amateur operator/station license shall be submitted on FCC Form 610.

(5) Renewal of an amateur club, military recreation, or Radio Amateur Civil Emergency Service (RACES) station license shall be submitted on FCC Form 610–B.

(6) Renewal of station authorizations in the Private Operational Fixed Microwave Service (part 101 of this chapter) shall be submitted on such form as the Commission may designate by the public notice in accordance with the provisions of § 101.13 of this chapter.

(b) All applications for renewal of license must be made during the license term and should be filed within 90 days but not later than 30 days prior to the end of the license term. In any case in which the licensee has, in accordance with the provisions of this chapter, made timely and sufficient application for renewal of license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined.

(c) Reinstatement of an expired license in the Private Land Mobile Radio Services may be requested up to thirty (30) days after the expiration date using FCC Form 574, 574–R or 405–A. See § 1.4.

(Secs. 4, 5, 303, 307, 308, 48 Stat., as amended, 1066, 1068, 1082, 1083, 1084; 47 U.S.C. 154, 155, 303, 307, 308)

[28 FR 12454, Nov. 22, 1963, as amended at 29 FR 3229, Mar. 11, 1964; 48 FR 36105, Aug. 9, 1983; 56 FR 64715, Dec. 12, 1991; 56 FR 65858, Dec. 19, 1991; 57 FR 8274, Mar. 9, 1992; 61 FR 26671, May 28, 1996]

### § 1.931 Requests for waiver of private radio rules.

(a) All requests for waiver of the rules governing the Private Radio Services that require a fee (see § 1.1102) shall be submitted to the Mellon Bank, Pittsburgh, Pennsylvania at the address set forth in § 1.1102. Waiver requests that do not require a fee must be addressed to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245. Waiver requests attached to applications must be submitted in accordance with § 0.401(b) of the rules.

(b) Applicants requiring expeditious processing of their request for waiver shall clearly caption both their request for waiver and the envelope containing it with the words ''WAIVER—TIMELY ACTION REQUESTED.''

(Sec. 4(i), Communications Act of 1934, as amended, 47 U.S.C. 154(i); 47 CFR 0.231)

[49 FR 20291, May 14, 1984, as amended at 52 FR 10229, Mar. 31, 1987; 55 FR 19154, May 8, 1990; 56 FR 64715, Dec. 12, 1991]

### §1.933 Installation or removal of apparatus.

(a) In the Public Safety, Industrial, and Land Transportation Radio Services, replacement of transmitting equipment may be made without prior authorization: *Provided,* The replacement transmitter appears in the Commission's ''Radio Equipment List, Part C'' as designated for use in the Public Safety, Industrial, and Land Transportation Radio Services, and the substitute equipment employs the same type of emission and does not exceed the power limitation as set forth in the station authorization.

(b) In the Personal Radio Services, replacement of transmitting equipment may be made without prior authorization if: (1) The replacement transmitter appears in the Commission's ''Radio Equipment List,'' as designated for use in the Personal Radio Service, *or* (2) the replacement transmitter is for an R/C station, operates on frequencies assigned for R/C station use and complies with the technical standards of part 95, subpart E.

[28 FR 12454, Nov. 22, 1963, as amended at 48 FR 24890, June 3, 1983]

### §1.934 Procedure with respect to amateur radio operator license.

Each candidate for an amateur radio license which requires the applicant to pass one or more examination elements must present the examiner(s) with a properly completed FCC Form 610 prior to the examination. Upon completion of the examination, the examiner(s) will immediately grade the test papers. If the applicant is successful, the examiner(s) will forward the candidate's application to: (a) The Commission's Gettysburg, Pennsylvania facility for an application for a Novice Class operator license, or (b) a Volunteer-Examiner Coordinator (VEC) for all other classes of operator licenses. The examiners will then issue a certificate for successful completion of an amateur radio operator examination. A VEC will forward the application to the Commission's Gettysburg, Pennsylvania facility.

[48 FR 45658, Oct. 6, 1983]

## APPLICATION PROCESSING PROCEDURES

### §1.951 How applications are distributed.

*Licensing Division.* All applications for radio stations are distributed as follows:

(a) *Special Services Branch.*

(1) All Aviation Radio Services and Maritime Radio Services applications.

(2) Personal Radio Services applications:

Amateur, General Mobile, and Interactive Video and Data

(b) *Land Mobile Branch.* (1) Industrial Radio Services applications:

Business, Forest Products, Industrial Radiolocation, Manufacturers, Motion Picture, Petroleum, Power, Relay Press, Special Industrial and Telephone Maintenance

(2) Land Transportation Radio Services applications:

Motor Carrier, Railroad, Taxicab, and Automobile Emergency

(3) Public Safety Radio Services applications:

Fire, Forestry-Conservation, Highway Maintenance, Local Government, and Police

(4) Special Emergency Radio Services applications:

Medical services, rescue organizations, physically handicapped, veterinarians, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities

(c) *Microwave Branch.* Operational fixed point-to-point and point-to-multipoint applications.

[49 FR 30944, Aug. 2, 1984, as amended at 57 FR 8274, Mar. 9, 1992]

### §1.952 How file numbers are assigned.

(a) File numbers are assigned to certain categories of applications by the Private Radio Bureau.

(b) File number symbols and service or class of station designators:

AMATEUR AND DISASTER SERVICES

Y—Amateur
D—Disaster
R—Races

AVIATION SERVICES

A—Aeronautical and fixed group
AA—Aviation auxiliary group
AR—Aviation radionavigation land
AC—Civil Air Patrol

PERSONAL RADIO SERVICE

CA—General Mobile Radio Service
ZA—General Mobile Radio Service
ZV—Interactive Video and Data Service

MARINE SERVICES

MK—Alaskan group
M—Coastal group
MA—Marine auxiliary group
MR—Marine radiodetermination land

MICROWAVE SERVICES

OF—Private Operational-Fixed Microwave

RADIOLOCATION SERVICE

RS—Radiolocation

LAND MOBILE SERVICES BELOW 800 MHZ

IG—Conventional Industrial/Business Pool
PW—Conventional Public Safety Pool
YG—Trunked Industrial/Business Pool
YW—Trunked Public Safety Pool

800 MHZ SERVICES

GB—Conventional Business
GO—Conventional Industrial/Land Transportation
GP—Conventional Public Safety/Special Emergency
GX—Conventional Commercial (SMRS)
YB—Trunked Business
YO—Trunked Industrial/Land Transportation
YP—Trunked Public Safety/Special Emergency
YX—Trunked Commercial (SMRS)

900 MHZ PAGING SERVICES

GS—Private carrier paging systems

(c) Application or authorization designator symbols:

P—Construction Permit.
MP—Modified CP.
MP/L—Modified CP and License.
MP/ML—Modified CP and Modified License.
AP—Assignment of Permit.
L—License.
ML—Modified License.
AL—Assignment of License.
P/L—Combination CP and License.
R—Renewed License.
TC—Transfer of Control.

[28 FR 12454, Nov. 22, 1963, as amended at 49 FR 30945, Aug. 2, 1984; 57 FR 8274, Mar. 9, 1992; 62 FR 18843, Apr. 17, 1997]

EFFECTIVE DATE NOTE: At 62 FR 18843, Apr. 17, 1997, paragraph (b) was revised, effective Oct. 17, 1997. For the convenience of the user, the superseded text is set forth as follows:

**§ 1.952 How file numbers are assigned.**

* * * * *

(b) File number symbols and service or class of station designators:

AMATEUR AND DISASTER SERVICES

Y—Amateur
D—Disaster
R—Races

AVIATION SERVICES

A—Aeronautical and fixed group
AA—Aviation auxiliary group
AR—Aviation radionavigation land
AC—Civil Air Patrol

PERSONAL RADIO SERVICES

CA—General Mobile Radio Service
ZA-General Mobile Radio Service
ZV-Interactive Video and Data Service

INDUSTRIAL SERVICES

IB—Business
IF—Forest products
IX—Manufacturers
IM—Motion picture
IP—Petroleum
IY—Relay press
IS—Special industrial
IT—Telephone maintenance
IW—Power

LAND TRANSPORTATION SERVICES

LA—Automobile emergency
LI—Interurban passenger
LJ—Interurban property
LR—Railroad
LX—Taxicab
LU—Urban passenger
LV—Urban property

MARINE SERVICES

MK—Alaskan group
M—Coastal group
MA—Marine auxiliary group
MR—Marine radiodetermination land

MICROWAVE SERVICES

OF—Private Operational-Fixed Microwave

PUBLIC SAFETY SERVICES

PF—Fire
PO—Forestry conservation

PH—Highway maintenance
PL—Local government
PP—Police
PS—Special emergency

RADIOLOCATION SERVICE

RS—Radiolocation

800 MHZ SERVICES

GB—Conventional Business
GO—Conventional Industrial/Land Transportation
GP—Conventional Public Safety/Special Emergency
GX—Conventional Commercial (SMRS)
YB—Trunked Business
YO—Trunked Industrial/Land Transportation
YP—Trunked Public Safety/Special Emergency
YX—Trunked Commercial (SMRS)

900 MHZ PAGING SERVICES

GS—Private carrier paging systems

* * * * *

### §1.953 How applications are processed.

(a) Applications are processed in sequence according to date of filing, or pursuant to the system of random selection prescribed in §1.972 of this part. Applications which are in accordance with the provisions of this chapter and established policies of the Commission may be processed to completion in accordance with the applicable delegations of authority as set forth in part O of this chapter.

(b) [Reserved]

[48 FR 27201, June 13, 1983 and 51 FR 2703, Jan. 21, 1986]

### §1.955 Frequency coordination, Canada.

(a) As a result of mutual agreements, the Commission has, since May 1950 had an arrangement with the Canadian Department of Communications for the exchange of frequency assignment information and engineering comments on proposed assignments along the Canada-United States borders in certain bands above 30 MHz. Except as provided in paragraph (b) of this section, this arrangement involves assignments in the following frequency bands.

MHz

| | |
|---|---|
| 30.56–32.00 | 75.40–76.00 |
| 33.00–34.00 | 150.80–174.00 |
| 35.00–36.00 | 450–470 |
| 37.00–38.00 | 806.00–960.00 |
| 39.00–40.00 | 1850.0–2200.0 |
| 42.00–46.00 | 2450.0–2690.0 |
| 47.00–49.60 | 3700.0–4200.0 |
| 72.00–73.00 | 5925.0–7125.0 |

GHz

| | |
|---|---|
| 10.55–10.68 | 10.70–13.25 |

(b) The following frequencies are not involved in this arrangement because of the nature of the services:

MHz

| | |
|---|---|
| 156.3 | 156.9 |
| 156.35 | 156.95 |
| 156.4 | 157.0 and 161.6 |
| 156.45 | 157.05 |
| 156.5 | 157.1 |
| 156.55 | 157.15 |
| 156.6 | 157.20 |
| 156.65 | 157.25 |
| 156.7 | 157.30 |
| 156.8 | 157.35 |
| | 157.40. |

(c) Assignments proposed in accordance with the railroad industry radio frequency allotment plan along the United States-Canada borders utilized by the Federal Communications Commission and the Department of Transport, respectively, may be excepted from this arrangement at the discretion of the referring agency.

(d) Assignments proposed in any radio service in frequency bands below 470 MHz appropriate to this arrangement, other than those for stations in the Domestic Public (land mobile or fixed) category, may be excepted from this arrangement at the discretion of the referring agency if a base station assignment has been made previously under the terms of this arrangement or prior to its adoption in the same radio service and on the same frequency and in the local area, and provided the basic characteristics of the additional station are sufficiently similar technically to the original assignment to preclude harmful interference to existing stations across the border.

(e) For bands below 470 MHz, the areas which are involved lie between Lines A and B and between Lines C and D, which are described as follows:

*Line A*— Begins at Aberdeen, Wash., running by great circle arc to the intersection of 48° N., 120° W., thence along parallel 48° N., to the intersection of 95° W., thence by great circle arc through the southernmost point of Duluth, Minn., thence by great circle arc to 45° N., 85° W., thence southward along meridian 85° W., to its intersection with parallel 41° N., thence along parallel 41° N., to its intersection with meridian 82° W., thence by great circle arc through the southernmost point of Bangor, Maine, thence by great circle arc through the southern-most point of Searsport, Maine, at which point it terminates; and

*Line B*— Begins at Tofino, B.C., running by great circle arc to the intersection of 50° N., 125° W., thence along parallel 50° N., to the intersection of 90° W., thence by great circle arc to the intersection of 45° N., 79°30′ W., thence by great circle arc through the northernmost point of Drummondville, Quebec (lat: 45°52′ N., long: 72°30′ W.), thence by great circle arc to 48°30′ N., 70° W., thence by great circle arc through the northernmost point of Campbellton, N.B., thence by great circle arc through the northernmost point of Liverpool, N.S., at which point it terminates.

*Line C*— Begins at the intersection of 70° N., 144° W., thence by great circle arc to the intersection of 60° N., 143° W., thence by great circle arc so as to include all of the Alaskan Panhandle; and

*Line D*— Begins at the intersection of 70° N., 138° W., thence by great circle arc to the intersection of 61°20′ N., 139° W., (Burwash Landing), thence by great circle arc to the intersection of 60°45′ N., 135° W., thence by great circle arc to the intersection of 56° N., 128° W., thence south along 128° meridian to Lat. 55° N., thence by great circle arc to the intersection of 54° N., 130° W., thence by great circle arc to Port Clements, thence to the Pacific Ocean where it ends.

(f) For all stations using bands between 470 MHz and 1000 MHz; and for any station of a terrestrial service using a band above 1000 MHz, the areas which are involved are as follows:

(1) For a station the antenna of which looks within the 200° sector toward the Canada-United States borders, that area in each country within 35 miles of the borders;

(2) For a station the antenna of which looks within the 160° sector away from the Canada-United States borders, that area in each country within 5 miles of the borders; and

(3) The area in either country within coordination distance as described in Recommendation 1A of the Final Acts of the EARC, Geneva, 1963 of a receiving earth station in the other country which uses the same band.

(g) Proposed assignments in the space radiocommunication services and proposed assignments to stations in frequency bands allocated coequally to space and terrestrial services above 1 GHz are not treated by these arrangements. Such proposed assignments are subject to the regulatory provisions of the International Radio Regulations.

(h) Assignments proposed in the frequency band 806–890 MHz shall be in accordance with the Canada-United States agreement, dated April 7, 1982.

[35 FR 6752, Apr. 29, 1970, as amended at 36 FR 19440, Oct. 6, 1971; 47 FR 57051, Dec. 22, 1982; 48 FR 8455, Mar. 1, 1983]

### § 1.958 Defective applications.

(a) Applications will be considered defective if:

(1) The applicant is disqualified by statute.

(2) The proposed use or purpose of the station applied for would be unlawful.

(3) The frequency applied for is not allocated to the service proposed.

(4) The application form is not signed in accordance with §1.913 of these rules.

(5) The application is not complete with respect to answers, supplementary statements, execution or other matters of a formal character.

(6) The application is not in accordance with the Commission's rules or requirements and is not accompanied either by (i) a petition to amend any rule or regulation with which the application is in conflict, or (ii) a request by the applicant for waiver of any rule or requirement with which the application is in conflict. A request for rule amendment or waiver must show the nature of the amendment or waiver requested and set forth the reasons in support of it. Requests for waiver must state the nature of the waiver or exception desired and set forth reasons in support thereof including a showing that unique circumstances are involved and that there is no reasonable alternative solution within existing rules.

(7) The applicant is requested by the Commission to file any additional documents or information not included in the prescribed form and the applicant

fails to comply with the Commission's request.

(b) An application which is defective on its face will not be accepted for filing and will be dismissed.

(c) An application which is accepted for filing, but which is later determined to be defective, will be dismissed.

[49 FR 30945, Aug. 2, 1984, as amended at 54 FR 38995, Sept. 22, 1989]

### §1.959 Resubmitted applications.

Any application for frequencies below 470 MHz which has been returned to the applicant for correction will be processed in its original position in the processing line if it is resubmitted and received by the Commission's offices in Gettysburg, PA within 60 days from the date on which it was returned to the applicant. Otherwise it will be treated as a new application and require an additional fee as set forth in part 1, subpart G of this chapter. An application for frequencies above 470 MHz which has been returned to the applicant will be processed in its original position in the processing line if it is resubmitted and received by the Commission's offices in Gettysburg, PA within 30 days (45 days outside the continental United States) from the date on which it was returned to the applicant. Otherwise it will be treated as a new application and require an additional fee as set forth in part 1, subpart G of this chapter.

[52 FR 10230, Mar. 31, 1987]

### §1.961 Dismissal of applications.

(a) Any application may, upon written request signed by the applicant or his attorney, be dismissed without prejudice as a matter of right prior to the designation of such application for hearing.

(b) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice where an application has not yet been designated for hearing; such dismissal may be with prejudice after an application has been designated for hearing.

(c) Requests to dismiss an application without prejudice after it has been designated for hearing will be considered only upon written petition properly served upon all parties of record and will be granted only for good cause shown. Such petition must be accompanied by a written and signed statement of a person with knowledge of the facts as to whether or not consideration has been promised to or received by petitioner, directly or indirectly, in connection with the filing of such petition for dismissal of the application.

### §1.962 Public notice of acceptance for filing; petitions to deny applications of specified categories.

(a) Except as qualified in paragraph (b) of this section, the provisions of this section shall apply to all applications for authorizations, and substantial amendments thereof, for the following categories of stations and services:

(1) Industrial radiopositioning stations for which frequencies are assigned on an exclusive basis.

(2) Aeronautical enroute stations.

(3) Aeronautical advisory stations.

(4) Airport control tower stations.

(5) Aeronautical fixed stations.

(6) Public coast stations, excluding those located in Alaska which will not render service for hire.

(b) The provisions of this section are not applicable to applications for the type of authorizations listed in this paragraph.

(1) A minor change in the facilities of an authorized station or a minor amendment of an application on file.

(2) Consent to an involuntary assignment or transfer under section 310(b) of the Communications Act or to a voluntary assignment or transfer thereunder which does not involve a substantial change in ownership or control.

(3) A license under section 319(c) of the Communications Act or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such licensee.

(4) Extension of time to complete construction of authorized facilities.

(5) A special temporary authorization not to exceed 30 days where the applicant does not contemplate the filing of an application for regular operation, or not to exceed 60 days pending or after the filing of an application for regular operation.

(6) An authorization under any of the proviso clauses of section 308(a) of the Communications Act.

(c) For the purposes of this section, a substantial amendment of an application on file and applications for a substantial change in the facilities of an authorized station shall be:

(1) Any addition or change in frequency (except deletion of a frequency);

(2) Any change in antenna azimuth;

(3) Any change in antenna beam width;

(4) Any change in antenna location greater than 5 seconds;

(5) Any change in antenna location of less than 5 seconds but also involving a requirement for special aeronautical study;

(6) Any change in emission;

(7) Any increase in antenna height;

(8) Any increase in authorized power in excess of a 2 to 1 ratio;

(9) Any increase in emission bandwidth.

(d) All amendments of an application on file and all changes requested in the facilities of an authorized station other than those amendments and modifications listed in paragraph (c) of this section shall be considered minor.

(e) The Commission will issue at regular intervals Public Notices listing all applications subject to this section which have been received by the Commission in a condition acceptable for filing, or have been returned to an applicant for correction, within the 30-day public notice period. They will relist any application which has been amended substantially since its previous listing, or which has been resubmitted to the Commission, after public notice of the return of the application to an applicant, pursuant to § 1.959. Such acceptance for filing shall not preclude the subsequent dismissal of an application as defective.

(f) No application subject to the provisions of this section, as originally filed or substantially amended, will be granted by the Commission prior to the 31st day following the issuance of public notice of the acceptance for filing of such application or of any substantial amendment thereof; *Provided, however,* That the Commission, notwithstanding the requirements of this paragraph, may, if the grant of such application is otherwise authorized by law:

(1) Grant requests for special temporary authorization for periods not exceeding 180 days, accompanied by a statement of the reasons therefor, if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in institution of such operations would seriously prejudice the public interest, and

(2) Extend such temporary authorizations for additional periods not exceeding 180 days each, upon a finding of continued extraordinary circumstances requiring temporary operations in the public interest.

(g) Any party in interest may file with the Commission a petition to deny any application, whether as filed originally or as subsequently amended by a substantial amendment as defined in paragraph (c) of this section, subject to the provisions of this section, no later than 30 days after the date of the public notice listing the application, or substantial amendment to the application, as having been accepted for filing. Such petitions must be filed with the Commission's offices in Gettysburg, Pennsylvania. Address them to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245. A petitioner shall serve a copy of such petition on the applicant. A petition shall contain specific allegations of fact sufficient to make a prima facie showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.

(h) The applicant may file an opposition to any petition to deny and the petitioner may file a reply thereto (see §1.45) in which allegations of fact or denials thereof, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall serve a copy of his opposition on the petitioner, and the petitioner shall serve a copy of his reply on the applicant.

(Sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309)

[28 FR 12454, Nov. 22, 1963, as amended at 29 FR 7822, June 19, 1964; 30 FR 4479, Apr. 7, 1965; 36 FR 19440, Oct. 6, 1971; 48 FR 1973, Jan. 17, 1983; 49 FR 30945, Aug. 2, 1984; 49 FR 36376, Sept. 17, 1984; 51 FR 2703, Jan. 21, 1986; 53 FR 28940, Aug. 1, 1988; 54 FR 10327, Mar. 13, 1989; 55 FR 10462, Mar. 21, 1990; 56 FR 64715, Dec. 12, 1991; 61 FR 26671, May 28, 1996

ACTION ON APPLICATIONS

AUTHORITY: Sections 1.971 through 1.973 are issued under sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309.

### §1.971 Grants without a hearing.

(a) The Commission will grant without a hearing an application for a station authorization if it is proper upon its face and if the Commission finds from an examination of such application and supporting data, any pleading filed, or other matters which it may officially notice, that:

(1) There are no substantial and material questions of fact;

(2) The applicant is legally, technically, financially, and otherwise qualified;

(3) A grant of the application would not involve modification, revocation, or non-renewal of any existing license;

(4) A grant of the application would not preclude the grant of any mutually exclusive application; and

(5) A grant of the application would serve the public interest, convenience, and necessity.

(b) If a petition to deny an application has been filed pursuant to §1.962 and the Commission grants such application pursuant to paragraph (a) of this section, the Commission will deny the petition and issue a concise statement of the reason for such denial and disposing of all substantial issues raised by the petition.

[28 FR 12454, Nov. 22, 1963, as amended at 49 FR 30946, Aug. 2, 1984]

### §1.972 Grants by random selection.

(a) The provisions of this section, including provisions incorporated by reference, may apply to applications for initial licenses:

(1) For stations in the following Private Radio Services:

Part 80—Stations in the Maritime Services
Part 87—Aviation Services
Part 90—Private Land Mobile Services
Part 95—Subpart F—Personal Radio Services
Part 101—Subpart H—Private Operational Fixed Point-to-Point Microwave Service.

(2) In any other proceedings in the Private Radio Services in which the Commission determines that there is no material difference in competing applicants' abilities to serve the public interest.

(b) Applications in the services specified above shall be tendered, filed, accepted or dismissed, publicly noted, and subject to Petitions to Deny in accordance with §1.962 and the rules and policies established for each respective service.

(c) If there are mutually exclusive applications for an initial license for stations subject to part 80 or part 87 of this chapter, or if there are more applications for an initial license in part 90, part 95-subpart F, or part 101- subpart H of this chapter, than can be accommodated on available frequencies, the Commission may process the applications pursuant to a system of random selection. Each such random selection shall be conducted pursuant to an order issued by the Wireless Telecommunications Bureau and under the direction of the Chief of the Bureau.

(d) Expedited hearing proceedings may be used to apply comparative criteria to determine which applications will be granted, denied or subjected to random selection. The selection percentages, preferences, and probability calculations prescribed in §1.1621 *et seq.* of this part are not applicable to any system of random selection conducted in the Private Radio Bureau. Following the random selection, the Commission will announce the tentative selectee and determine whether the tentative

selectee is qualified to receive the license under the rules applicable to the respective service. Where authorized under § 1.962, Petitions to Deny which have been filed against the tentative selectee before the random selection will be reviewed and processed prior to grant, in accordance with § 1.962 and rules applicable to each respective service. If the Commission determines that the tentative selectee has satisfied all requirements, it will grant the application. If it is determined that an initial tentative selectee is not qualified to receive the license grant, another tentative selectee chosen from among the same applicant pool during the same random selection will be designated until a qualified applicant is determined. If the Commission determines that a substantial and material question of fact exists, it will designate the question for hearing. Hearings may be conducted by the Commission or the Chief of the Private Radio Bureau, or, in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge.

[48 FR 27201, June 13, 1983, as amended at 48 FR 43330, Sept. 23, 1983; 49 FR 30946, Aug. 2, 1984; 50 FR 4650, Feb. 1, 1985; 51 FR 31304, Sept. 2, 1986; 57 FR 8274, Mar. 9, 1992; 59 FR 24957, May 13, 1994; 61 FR 26671, May 28, 1996]

### § 1.973 Designation for hearing.

(a) If the Commission is unable to make the findings prescribed in § 1.971(a) and does not utilize the system of random selection prescribed in § 1.972 of this part, it will formally designate the application for hearing on the grounds or reasons then obtaining and will notify the applicant and all other known parties in interest of such action.

(b) Orders designating applications for hearing will specify with particularity the matters in issue.

(c) Parties in interest, if any, who are not notified by the Commission of its action in designating a particular application for hearing may acquire the status of a party to the proceeding by filing a petition for intervention showing the basis of their interest not more than 30 days after publication in the FEDERAL REGISTER of the hearing issues or any substantial amendment thereto.

(d) The applicant and all other parties in interest shall be permitted to participate in any hearing subsequently held upon such applications. Hearings may be conducted by the Commission or by the Chief of the Private Radio Bureau, or, in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge. The burden of proceeding with the introduction of evidence and burden of proof shall be upon the applicant, except that with respect to any issue presented by a Petition to Deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission or the Chief of the Private Radio Bureau.

[48 FR 27202, June 13, 1983]

## REPORTS TO BE FILED WITH THE COMMISSION

### § 1.981 Reports, annual and semi-annual.

(a) Licensees of stations authorized for developmental operation shall submit a report on the results of the developmental program. The report shall be filed with and made a part of each application for renewal of authorization.

(b) The report shall include comprehensive and detailed information on the following:

(1) The final objective.

(2) Results of operation to date.

(3) Analysis of the results obtained.

(4) Copies of any published reports.

(5) Need for continuation of the program.

(6) Number of hours of operation on each frequency.

(c) Where required by the particular service rules, licensees who have entered into agreements with other persons for the cooperative use of radio station facilities must submit annually an audited financial statement reflecting the nonprofit cost-sharing nature of the arrangement to the Commission's offices in Washington, D.C., no later than three months after the close of the licensee's fiscal year.

## Subpart G—Schedule of Statutory Charges and Procedures for Payment

SOURCE: 52 FR 5289, Feb. 20, 1987, unless otherwise noted.

### §1.1101 Authority.

Authority to impose and collect these charges is contained in title III, section 3001 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), revising 47 U.S.C. 158, which directs the Commission to prescribe charges for certain of the regulatory services it provides to many of the communications entities within its jurisdiction. This law revises section 8 of the Communications Act of 1934, as amended, which contains a Schedule of Charges as well as procedures for modifying and collecting these charges.

[55 FR 19155, May 8, 1990]

### §1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. Marine Coast Radio Service: | | | | |
| a. New, Renewal | 503 | 105 | PBMR | Federal Communications Commission, Marine Coast Service, P.O. Box 358265, Pittsburgh, PA 15251–5265. |
| b. Modification, Assignment, Nonprofit, (CMRS) Public Coast/New, Modification, Renewal. | 503 | 90 | PBMM | Federal Communications Commission, Marine Coast Service, P.O. Box 358770, Pittsburgh, PA 15251–5770. |
| c. Automated Renewal | 452R | 105 | PBMR | Federal Communications Commission, Marine Coast Renewal, P.O. Box 358270, Pittsburgh, PA 15251–5270. |
| 2. Aviation Ground Radio Service: | | | | |
| a. New, Renewal | 406 | 105 | PBVR | Federal Communications Commission, Aviation Ground Service, P.O. Box 358260, Pittsburgh, PA 15251–5260. |
| b. Modification, Assignment, Nonprofit. | 406 | 90 | PBVM | Federal Communications Commission, Aviation Ground Service, P.O. Box 358765, Pittsburgh, PA 15251–5765. |
| c. Automated Renewal | 452R | 105 | PBVR | Federal Communications Commission, Aviation Ground Renewal, P.O. Box 358270, Pittsburgh, PA 15251–5270. |
| 3. Ship Radio Service: | | | | |
| a. New, Renewal | 506 | 75 | PASR | Federal Communications Commission, Ship Radio Service, P.O. Box 358275, Pittsburgh, PA 15251–5275. |
| b. Modification, Nonprofit | 506 | 45 | PASM | Federal Communications Commission, Ship Radio Service, P.O. Box 358775, Pittsburgh, PA 15251–5775. |
| c. Exemption from Ship Station Requirement. | 820 | 130 | PDWM | Federal Communications Commission, Waiver Requests, P.O. Box 358300, Pittsburgh, PA 15251–5300. |
| d. Automated Renewal | 405B | 75 | PASR | Federal Communications Commission, Marine Ship Renewal, P.O. Box 358290, Pittsburgh, PA 15251–5290. |
| 4. Aircraft Radio Service: | | | | |
| a. New, Renewal | 404 | 75 | PAAR | Federal Communications Commission, Aircraft Radio Service, P.O. Box 358280, Pittsburgh, PA 15251–5280. |
| b. Modification, Nonprofit | 404 | 45 | PAAM | Federal Communications Commission, Aircraft Radio Service, P.O. Box 358780, Pittsburgh, PA 15251–5780. |
| c. Automated Renewal | 405B | 75 | PAAR | Federal Communications Commission, Aviation Aircraft Renewal, P.O. Box 358290, Pittsburgh, PA 15251–5290. |
| 5. Private Operational Fixed Microwave Radio Service: | | | | |
| a. New, Renewal | 402 | 225 | PEOR | Federal Communications Commission, Operational Fixed Microwave Service, P.O. Box 358250, Pittsburgh, PA 15251–5250. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| b. Modification, Assignment, Nonprofit. | 402 | 190 | PEOM | Federal Communications Commission, Operational Fixed Microwave Service, P.O. Box 358760, Pittsburgh, PA 15251–5760. |
| c. Automated Renewal | 402R | 225 | PEOR | Federal Communications Commission, Operational Fixed Microwave Service Renewal, P.O. Box 358255, Pittsburgh, PA 15251–5255. |
| 6. Land Mobile Radio Services: | | | | |
| a. Land Transportation Services: | | | | |
| (1) New, Renewal, Reinstatement. | 600 | 60 | PALR | Federal Communications Commission, Land Transportation Services, P.O. Box 358215, Pittsburgh, PA 15251–5215. |
| (2) Modification, Assignment, Nonprofit. | 600 | 45 | PALM | Federal Communications Commission, Land Transportation Services, P.O. Box 358730, Pittsburgh, PA 15251–5730. |
| b. Business Radio Service: | | | | |
| (1) (PMRS) New, Renewal, Reinstatement. | 600 | 60 | PALR | Federal Communications Commission, Business Radio Service, P.O. Box 358220, Pittsburgh, PA 15251–5520. |
| (2) Modification, Assignment, Nonprofit, and (CMRS) New, Renewal, Reinstatement. | 600, 490 | 45 | PALM | Federal Communications Commission, Business Radio Service, P.O. Box 358735, Pittsburgh, PA 15251–5735. |
| c. Other Industrial Services: | | | | |
| (1) New, Renewal, Reinstatement. | 600 | 60 | PALR | Federal Communications Commission, Other Industrial Services, P.O. Box 358225, Pittsburgh, PA 15251–5225. |
| (2) Modification, Assignment, Nonprofit. | 600 | 45 | PALM | Federal Communications Commission, Other Industrial Services, P.O. Box 358740, Pittsburgh, PA 15251–5740. |
| d. 800 Megahertz Services: | | | | |
| (1) (PMRS) New, Renewal, Reinstatement. | 600 | 80 | PALS | Federal Communications Commission, 800 Megahertz Services, P.O. Box 358235, Pittsburgh, PA 15251–5235. |
| (2) Modification, Assignment, Nonprofit and (CMRS) New, Renewal Reinstatement. | 600, 490 | 45 | PALM | Federal Communications Commission, 800 Megahertz Services, P.O. Box 358750, Pittsburgh, PA 15251–5750. |
| e. 900 Megahertz Service: | | | | |
| (1) (PMRS) New, Renewal, Reinstatement. | 600 | 80 | PALS | Federal Communications Commission, 900 Megahertz Services, P.O. Box 358240, Pittsburgh, PA 15251–5240. |
| (2) Modification, Assignment, Nonprofit and (CMRS) New, Renewal, Reinstatement. | 600, 490 | 45 | PALM | Federal Communications Commission, 900 Megahertz Services, P.O. Box 358755, Pittsburgh, PA 15251–5755. |
| f. 470–512 Megahertz Service: | | | | |
| (1) (PMRS) New, Renewal, Reinstatement. | 600 | 80 | PALS | Federal Communications Commission, 470–512 Megahertz Service, P.O. Box 358810, Pittsburgh, PA 15251–5810. |
| (2) Modification, Assignment, Nonprofit and (CMRS) New, Renewal, Reinstatement. | 600, 490 | 45 | PALM | Federal Communications Commission, 470–512 Megahertz Service, P.O. Box 358815, Pittsburgh, PA 15251–5815. |
| g. 220 Megahertz Service (Local): | | | | |
| (1) (PMRS) New, Renewal, Reinstatement. | 600 | 80 | PALS | Federal Communications Commission, 200 Megahertz Service (Local), P.O. Box 358360, Pittsburgh, PA 15251–5360. |
| (2) Modification, Assignment, Nonprofit and (CMRS) New, Renewal, Reinstatement. | 600, 490 | 45 | PALM | Federal Communications Commission, 220 Megahertz Service (Local), P.O. Box 358790, Pittsburgh, PA 15251–5790. |
| h. 220 Megahertz Service (Nationwide): | | | | |
| (1) (PMRS) New, Renewal, Reinstatement. | 600 | 115 | PALT | Federal Communications Commission, 220 Megahertz Service (Nationwide), P.O. Box 358820, Pittsburgh, PA 15251–5820. |
| (2) Modification, Assignment, Nonprofit and (CMRS) New, Renewal, Reinstatement. | 600, 490 | 45 | PALM | Federal Communications Commission, 220 Megahertz Service (Nationwide), P.O. Box 358825, Pittsburgh, PA 15251–5825. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| i. BUS, OI, LT, GMRS, 470–512, 800, 900, 220 (Local), 220 (Nationwide)-Nonprofit Renewal; and PS/SE (for profit). | 574R/405A .... | 45 | PALM | Federal Communications Commission, 574R/405A Station Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| j. BUS, OI, LT, GMRS, Renewal. | 574R/405A .... | 60 | PALR | Federal Communications Commission, 574R/405A Station Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| k. IVDS Renewal (Nonprofit) | 574R/405A .... | 45 | PAIM | Federal Communications Commission, 574R/405A Station Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| l. IVDS Renewal ..... | 574R/405A .... | 115 | PAIR | Federal Communications Commission, 574R/405A Station Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| m. 220 (Nationwide) Renewal. | 574R/405A .... | 115 | PALT | Federal Communications Commission, 574R/405A Station Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| n. 470–512, 800, 900, 220 (Local) Renewal. | 574R/405A .... | 80 | PALS | Federal Communications Commission, 574R/405A Station Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| 7. Finders Preference ..... | 159 & Corres | 130 | PDXM | Federal Communications Commission, Finders Preference, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 8. STA (Common Carrier): | | | | |
| a. Point-to-Point Mircowave | 159 & Corres | 90 | CEP | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| b. Local Television Transmission. | 159 & Corres | 90 | CEP | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 9. STA (Common Carrier): | | | | |
| a. Digital Electronic Message | 159 & Corres | 90 | CEL | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 10. STA (BAPS) ..... | 159 & Corres | 125 | MGA | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 11. STA (IVDS) ..... | 159 & Corres | 45 | PAIM | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 12. STA (Coast) ..... | 159 & Corres | 125 | PCMM | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 13. STA (Ground) ..... | 159 & Corres | 125 | PCVM | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 14. STA (Microwave) ..... | 159 & Corres | 45 | PAOM | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 15. STA (LM, GMRS) ..... | 159 & Corres | 45 | PALM | Federal Communications Commission, Special Temporary Authority, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 16. Corres. (Duplicate) ..... | 159 & Corres | 45 | PADM | Federal Communications Commission, Duplicate, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 17. Corres. (Hearing) ..... | 159 & Corres | 8,215 | PFHM | Federal Communications Commission, Hearing, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 18. Corres. (Wait List) ..... | 159 & Corres | 45 | PAWM | Federal Communications Commission, Wait List, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 19. Corres. (Blanket Renewal) Land Mobile (Nonprofit). | 159 & Corres | 45 | PALM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 20. Corres. (Blanket Renewal) IVDS (Nonprofit). | 159 & Corres | 45 | PAIM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 21. Corres. (Blanket Renewal) Microwave (Nonprofit). | 159 & Corres | 190 | PEOM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 22. Corres. (Blanket Renewal) Ground (Nonprofit). | 159 & Corres | 90 | PBVM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 23. Corres. (Blanket Renewal) Coast (Nonprofit). | 159 & Corres | 90 | PBMM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
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| 24. Corres. (Blanket Renewal) Aircraft (Nonprofit). | 159 & Corres | 45 | PAAM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 25. Corres. (Blanket Renewal) Ship (Nonprofit). | 159 & Corres | 45 | PASM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 26. Corres. (Blanket Renewal) BUS, OI, LT, GMRS. | 159 & Corres | 60 | PALR | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 27. Corres. (Blanket Renewal) 470–512, 800, 900, 220 (Local). | 159 & Corres | 80 | PALS | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 28. Corres (Blanket Renewal) 220 (Nationwide). | 159 & Corres | 115 | PALT | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 29. Corres (Blanket Renewal) IVDS. | 159 & Corres | 115 | PAIR | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 30. Corres (Blanket Renewal) Microwave. | 159 & Corres | 225 | PEOR | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 31. Corres (Blanket Renewal) Ground. | 159 & Corres | 105 | PBVR | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 32. Corres (Blanket Renewal) Coast. | 159 & Corres | 105 | PBMR | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 33. Corres (Blanket Renewal) Aircraft. | 159 & Corres | 75 | PAAR | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 34. Corres (Blanket Renewal) Ship. | 159 & Corres | 75 | PASR | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 35. Corres (Blanket Renewal) Common Carrier. | 159 & Corres | 190 | CJPM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 36. Corres (Blanket Renewal) Common Carrier. | 159 & Corres | 190 | CJLM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 37. Corres (Blanket Renewal) BAPS. | 159 & Corres | 45 | MAAM | Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305. |
| 38. Interactive Video Data Service: | | | | |
| a. New, Renewal | 574 | 115 | PAIR | Federal Communications Commission, Interactive Video Data Service, P.O. Box 358365, Pittsburgh, PA 15251–5365. |
| b. Modification | 574 | 45 | PAIM | Federal Communications Commission, Interactive Video Data Service, P.O. Box 358795, Pittsburgh, PA 15251–5795. |
| 39. General Mobile Radio Service: | | | | |
| a. New, Renewal | 574 | 60 | PALR | Federal Communications Commission, General Mobile Radio Service, P.O. Box 358230, Pittsburgh, PA 15251–5330. |
| b. Modification | 574 | 45 | PALM | Federal Communications Commission, General Mobile Radio Service, P.O. Box 358745, Pittsburgh, PA 15251–5745. |
| 40. Commercial Radio Operators Restricted Radiotelephone Operator Permit and Restricted Radiotelephone Operator Permit (Limited Use): | | | | |
| a. New | 753, 755 | 45 | PARR | Federal Communications Commission, Restricted Permit, P.O. Box 358295, Pittsburgh, PA 15251–5295. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 41. Commercial Radio Operators Marine Radio Operator Permit, GMDSS Radio Operator, GMDSS Radio Maintainer, GMDSS Radio Operator/Maintainer, First, Second, Third Class Radiotelegraph Operator: | | | | |
| a. Renewal | 756 | 45 | PACS | Federal Communications Commission, Radio Operator Permits, P.O. Box 358805, Pittsburgh, PA 15251–5805. |
| 42. Transfer of Control | 703, 490 | 45 | PATM | Federal Communications Commission, Transfer of Control, P.O. Box 358310, Pittsburgh, PA 15251–5805. |
| 43. Point to Point Microwave & Local Television Transmission Service: | | | | |
| a. New Conditional or Modified Conditional. | 494 | 190 | CJP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| b. Certification of Completion of Construction. | 494A | 190 | CJP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| c. Renewal of License | 405 | 190 | CJP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| d. Assignment of Authorization. | 702 | 70 | CCP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| (1) Additional Stations | 702 | 45 | CAP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| e. Transfer of Control | 704 | 70 | CCP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| (1) Additional Stations | 704 | 45 | CAP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| f. Extension of Construction Authority. | 701 | 70 | CCP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| g. Request for Waiver of Prior Construction Authorization. | 159 & Corres | 90 | CEP | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| 44. Digital Electronic Message Service: | | | | |
| a. New Conditional or Modified Conditional. | 494 | 190 | CJL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| b. Certification of Completion of Construction. | 494A | 190 | CJL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| c. Renewal of License | 405 | 190 | CJL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| d. Assignment of Authorization. | 702 | 70 | CCL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| (1) Additional Stations | 702 | 45 | CAL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| e. Transfer of Control | 704 | 70 | CCL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| (1) Additional Stations | 704 | 45 | CAL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| f. Extension of Construction Authority. | 701 | 70 | CCL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |
| g. Request for Waiver of Prior Construction Authorization Requirement. | 159 & Corres | 90 | CEL | Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 45. Broadcast Auxiliary Radio Service: | | | | |
| a. New Modification | 313 | 105 | MEA | Federal Communications Commission, Mass Media Services, P.O. Box 358700, Pittsburgh, PA 15251–5700. |
| b. Renewal | 159/313R | 45 | MAA | Federal Communications Commission, Mass Media Services, P.O. Box 358700, Pittsburgh, PA 15251–5700. |
| 46. Billing | Invoice | Various | Various | Federal Communications Commission, Billings, P.O. Box 358325, Pittsburgh, PA 15251–5325. |
| 47. Amateur Vanity C/S | 610V | 30 | WAVR | Federal Communications Commission, Amateur Vanity, P.O. Box 358924, Pittsburgh, PA 15251–5924. |
| 48. Electronic Filing: | | | | |
| a. LT, OI, BUS, GMRS, (PMRS) New, Renewal, Reinstatement. | ELT | 60 | PALR | Federal Communications Commission, Electronic Filing, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| b. Modification, Assignment, Nonprofit and (CMRS) New, Renewal, Reinstatement. | ELT | 45 | PALM | Federal Communications Commission, Electronic Filing, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| c. 220 MHZ (Local), 470–512, 800, 900, (PMRS) New, Renewal, Reinstatement. | ELT | 80 | PALS | Federal Communications Commission, Electronic Filing, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| d. 220 (Nationwide), (PMRS) New, Renewal, Reinstatement. | ELT | 115 | PALT | Federal Communications Commission, Electronic Filing, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| e. IVDS New, Renewal, Reinstatement. | ELT | 115 | PAIR | Federal Communications Commission, Electronic Filing, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 49. Public Safety/Special Emergency (for profit) New, Modification, Renewal, Reinstatement, Assignment. | 600 | 45 | PALM | Federal Communications Commission, PS/SE Services, P.O. Box 358285, Pittsburgh, PA 15251–5285. |
| 50. Paging and Radiotelephone Stations: | | | | |
| a. New or Additional Facility | 600 | 280 | CMD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. Major Modification | 600 | 280 | CMD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| c. Fill in Transmitters | 489,600 | 280 | CMD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Major Amendment to Pending Application. | 600 | 280 | CMD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| e. Assignment or Transfer | 490 | 280 | CMD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (1) Additional Call Sign | 490 | 45 | CAD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| f. Partial Assignment | 489, 490, 600 | 280 | CMD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| g. Renewal | 159/405 | 45 | CAD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| h. Minor Modifications | 489 | 45 | CAD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| i. Special Temporary Authority. | 159 & Corres | 245 | CLD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| j. Extension of Time to Construct. | 600 | 45 | CAD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| k. Notice of Completion of Construction. | 489 | 45 | CAD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| l. Auxiliary Test Station | 600 | 245 | CLD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| m. Subsidiary Communications Service. | 600 | 125 | CFD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| n. Combining Call Signs | 489 | 245 | CLD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| o. 900 MHz Nationwide Renewal Paging Network Organizer, Network Operator. | 159/405 | 45 | CAD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| p. Air-Ground Individual License—New, Renewal, Modification. | 159/409 | 45 | CAD | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| 51. Cellular systems: | | | | |
| a. New, Additional Facility, Major Modification. | 600 | 280 | CMC | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135. |
| b. Minor Modification | 489 | 75 | CDC | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135. |
| c. Assignment or Transfer | 490 | 280 | CMC | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135. |
| d. Partial Assignment | 489, 490, 600 | 280 | CMC | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135. |
| e. Renewal | 159/405 | 45 | CAC | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135. |
| f. Extension of Time to Complete Construction. | 600 | 45 | CAC | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135. |
| g. Special Temporary Authority. | 600 or 159 & Corres. | 245 | CLC | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135. |
| h. Combining Cellular Geographic Service Areas (per system). | 600 | 65 | CBC | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135. |
| 52. Rural Radio: | | | | |
| a. New, Additional Facility or Major Modification, Major Amendment to a Pending Application. | 600 | 130 | CGR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. Minor Modification | 489 | 45 | CAR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| c. Assignment or Transfer First Call Sign. | 490 | 130 | CGR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (1) Each Additional Call Sign. | 490 | 45 | CAR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (2) Partial Assignment (per call sign). | 489, 490, 600 | 130 | CGR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Renewal (per call sign) | 159/405 | 45 | CAR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| e. Extension of Time to Construct. | 600 | 45 | CAR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| f. Notice of Completion of Construction. | 489 | 45 | CAR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| g. Special Temporary Authority. | 159 & Corres | 245 | CLR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| h. Combining Call Signs | 489 | 245 | CLR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| i. Auxiliary Test Station | 600 | 245 | CLR | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| 53. Offshore Radio Service: | | | | |
| a. New, Additional Facility, Major Modification, (per transmitter). | 600 | 130 | CGF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| b. Fill in Transmitters (per transmitter). | 489, 600 | 130 | CGF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| c. Major Amendment to a Pending Application (per transmitter). | 600 | 130 | CGF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| d. Minor Modification (per transmitter). | 489 | 45 | CAF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| e. Assignment of Transfer: | | | | |
| (1) First Call Sign | 490 | 130 | CGF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (2) Each Additional Call Sign. | 490 | 45 | CAF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (3) Partial Assignment (per call sign). | 489, 490, 600 | 130 | CGF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| f. Renewal (per call sign) | 159/405 | 45 | CAF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| g. Extension of Time to Construct (per Application). | 600 | 45 | CAF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| h. Notice of Completion of Construction (per Application. | 489 | 45 | CAF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| i. Special Temporary Authority. | 159 & Corres | 245 | CLF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| j. Combining Call Signs (per call sign). | 489 | 245 | CLF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| k. Auxiliary Test Station (per transmitter). | 159 & 401 | 245 | CLF | Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130. |

[61 FR 41967, Aug. 13, 1996]

## § 1.1103 Schedule of charges for equipment authorization, experimental radio services, ship inspections and international telecommunications settlements.

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. Certification: | | | | |
| a. Receivers (except TV and FM). | 731 | 350 | EEC | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| b. All Other Devices | 731 | 895 | EGC | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| c. Modifications and Class II Permissive Changes. | 731 | 45 | EAC | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| d. Request for Confidentiality | 731 or 159 & Corres.. | 130 | EBC | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| 2. Type Acceptance: | | | | |
| a. All Devices | 731 | 450 | EFT | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| b. Modifications and Class II Permissive Changes. | 731 | 45 | EAT | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| c. Request for Confidentiality | 731 or 159 & Corres.. | 130 | EBT | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| 3. Notifications (All Devices) | 731 | 140 | ECN | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| 4. Advance Approval for Subscription TV System. | 159 & Corres | 2,740 | EIS | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| a. Request for Confidentiality | 159 & Corres | 130 | EBS | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| 5. Assignment of Applicant Code: | | | | |
| a. New applicants for all application types except Subscription TV. | 159 & Corres | 45 | EAG | Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. |
| 6. Experimental Radio Service: | | | | |
| a. New Station Authorization | 442 | 45 | EAE | Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| b. Modification of Authorization. | 442 | 45 | EAE | Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| c. Renewal of Station Authorization. | 405 | 45 | EAE | Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| d. Assignment or Transfer of Control. | 702 or 703 | 45 | EAE | Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| e. Special Temporary Authority. | 159 & Corres | 45 | EAE | Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| f. Additional fee required for any of the above applications that request confidentiality. | 159 & Corres | 45 | EAE | Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320. |
| 7. Ship Inspections: | | | | |
| a. Passenger Vessel Under Title III, Part III. | 801 | 390 | FCS | Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110. |
| b. Oceangoing Vessel Under Title III, Part II. | 801 | 755 | FFS | Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110. |
| c. Vessels Under the Great Lakes Agreement. | 801 | 110 | FDS | Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110. |
| d. Vessels Under the Safety of Life at Sea (SOLAS) Convention. | 801 | 660 | FES | Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5100. |
| e. Temporary Waiver of Inspection. | 159 & Corres | 75 | FBS | Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110. |
| 8. International Telecommunications Settlements Administrative Fee for Collections (per line item). | 99 | 2 | IAT | Licensees will be billed. |

[61 FR 41974, Aug. 13, 1996]

## §1.1104 Schedule of charges for applications and other filings in the mass media services.

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. Commercial Television Stations: | | | | |
| a. New or Major Change Construction Permit. | 301 | 3,080 | MVT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| b. Minor Change | 301 | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| (1) Main Studio Request | 159 & Corres. | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| c. New License | 302/302–TV | 210 | MJT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| d. License Renewal | 303–S | 125 | MGT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| e. License Agreement: | | | | |
| (1) Long Form | 314 | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 | 100 | MDT | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| f. Transfer of Control: | | | | |
| (1) Long Form | 315 | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 | 100 | MDT | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| g. Hearing (New and Major or minor change comparative construction permit hearings; comparative license renewal hearings). | 159 & Corres | 8,215 | MWT | Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170. |
| h. Call Sign | 159 & Corres | 70 | MBT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| i. Extension of Time to Construct or Replacement of Construction Permit. | 307 | 245 | MKT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| j. Special Temporary Authority. | 159 & Corres | 125 | MGT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| k. Petition for Rulemaking for New Community of License. | 301/302/302–TV. | 1,905 | MRT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| i. Ownership Report | 323 | 45 | MAT | Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180. |
| 2. Commercial AM Radio Stations: | | | | |
| a. New or Major Change Construction Permit. | 301 | 2,740 | MUR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| b. Minor Change | 301 | 690 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| (1) Main Studio Request | 159 & Corres. | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| c. New License | 302–AM | 450 | MMR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| d. AM Directional Antenna | 302–AM | 520 | MOR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| e. AM Remote Control | 301–A/301 | 45 | MAR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| f. License Renewal | 303–S | 125 | MGR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| g. License Assignment: | | | | |
| (1) Long Form | 314 | 690 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 | 100 | MDR | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| h. Transfer of Control: | | | | |
| (1) Long Form | 315 | 690 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 | 100 | MDR | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| i. Hearing (New and major/minor change comparative construction permit hearings; comparative license renewal hearings). | 159 & Corres | 8,215 | MWR | Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170. |
| j. Call Sign | 159 & Corres | 70 | MBR | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| k. Extension of Time to Construct or Replacement of Construction Permit. | 307 | 245 | MKR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| l. Special Temporary Authority. | 159 & Corres | 125 | MGR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| m. Ownership Report | 323 | 45 | MAR | Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180. |
| 3. Commercial FM Radio Stations: | | | | |
| a. New or Major Change Construction Permit. | 301 | 2,470 | MTR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| b. Minor Change | 301 | 690 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| (1) Main Studio Request | 159 & Corres. | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| c. New License | 302–FM | 140 | MHR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| d. FM Directional Antenna | 302–FM | 435 | MLR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| e. License Renewal | 303–S | 125 | MGR | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| f. License Assignment: | | | | |
| (1) Long Form | 314 | 690 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 | 100 | MDR | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| g. Transfer of Control: | | | | |
| (1) Long Form | 315 | 690 | MPR | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| (2) Short Form | 316 | 100 | MDR | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| h. Hearing (New and major/minor change comparative construction permit hearings; comparative license renewal hearings). | 159 & Corres | 8,215 | MWR | Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170. |
| i. Call Sign | 159 & Corres | 70 | MBR | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| j. Extension of Time to Construct or Replacement of Construction Permit. | 307 | 245 | MKR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| k. Special Temporary Authority. | 159 & Corres | 125 | MGR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| l. Petition for Rulemaking for New Community of License or Higher Class Channel. | 301/302–FM .. | 1,905 | MRR | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| m. Ownership Report ..... | 323 ..... | 45 | MAR | Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180. |
| 4. FM Translators: | | | | |
| a. New or Major Change Construction Permit. | 349 ..... | 520 | MOF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| b. New License ..... | 350 ..... | 105 | MEF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| c. License Renewal ..... | 303–S ..... | 45 | MAF | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| d. Special Temporary Authority. | 159 & Corres | 125 | MGF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| e. License Assignment ..... | 345/316, 315/314. | 100 | MDF | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| f. Transfer of Control ..... | 345/316, 315/314. | 100 | MDF | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| 5. TV Translators and LPTV Stations: | | | | |
| a. New or Major Change Construction Permit. | 346 ..... | 520 | MOL | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| b. New License ..... | 347 ..... | 105 | MEL | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| c. License Renewal ..... | 303–S ..... | 45 | MAL | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| d. Special Temporary Authority. | 159 & Corres | 125 | MGL | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| e. License Assignment ..... | 345/316, 315/314. | 100 | MDL | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| f. Transfer of Control ..... | 345/316, 315/314. | 100 | MDL | Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350. |
| 6. FM Booster Stations: | | | | |
| a. New or Major Change Construction Permit. | 349 ..... | 520 | MOF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| b. New License ..... | 350 ..... | 105 | MEF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| c. Special Temporary Authority. | 159 & Corres | 125 | MGF | Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200. |
| 7. TV Booster Stations: | | | | |
| a. New or Major Change Construction Permit. | 346 ..... | 520 | MOF | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| b. New License ..... | 347 ..... | 105 | MEF | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| c. Special Temporary Authority. | 159 & Corres | 125 | MGF | Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185. |
| 8. Multipoint Distribution Service (including multichannel MDS): | | | | |
| a. Conditional License ..... | 304 ..... | 190 | CJM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| b. Major Modification of Conditional Licenses or License Authorization. | 304 | 190 | CJM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| c. Certificate of Completion of Construction. | 494–A/304–A | 555 | CPM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| d. License Renewal | 405 | 190 | CJM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| e. Assignment or Transfer: | | | | |
| (1) First Station Application. | 702/704 | 70 | CCM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| (2) Each Additional Station. | 702/704 | 45 | CAM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| f. Extension of Construction Authorization. | 701 | 140 | CHM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |
| g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization. | 159 & Corres | 90 | CEM | Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155. |

[61 FR 41975, Aug. 13, 1996, as amended at 62 FR 51058, Sept. 30, 1997]

EFFECTIVE DATE NOTE: At 62 FR 51058, Sept. 30, 1997, §1.1104 was amended by adding entries 1.b.(1), 2.b.(1), 3.b.(1), effective Dec. 1, 1997.

## §1.1105 Schedule of charges for applications and other filings in the common carrier services.

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. All Common Carrier Services: | | | | |
| a. Hearing (Comparative New or Modifications). | 159 & Corres | 8,215 | BHZ | Federal Communications Commission, Common Carrier Enforcement, P.O. Box 358120, Pittsburgh, PA 15251–5120. |
| b. Developmental Authority (Same charge as regular authority in service unless otherwise indicated) | | | | |
| c. Formal Complaints Filing Fee. | 159 & Corres | 150 | CIZ | Federal Communications Commission, Common Carrier Enforcement, P.O. Box 358120, Pittsburgh, PA 15251–5120. |
| 2. Domestic 214 Applications: | | | | |
| a. Domestic Cable Construction. | 159 & Corres | 745 | CUT | Federal Communications Commission, Common Carrier Network Services, P.O. Box 358145, Pittsburgh, PA 15251–5145. |
| b. Other | 159 & Corres | 745 | CUT | Federal Communications Commission, Common Carrier Network Services, P.O. Box 358145, Pittsburgh, PA 15251–5145. |
| 3. Telephone Equipment Registration | 159 & 730 | 190 | CJQ | Federal Communications Commission, Common Carrier Network Services, P.O. Box 358145, Pittsburgh, PA 15251–5145. |
| 4. Tariff Filings: | | | | |
| a. Filing Fees | 159 & Corres | 600 | CQK | Federal Communications Commission, Common Carrier Tariff Filings, P.O. Box 358150, Pittsburgh, PA 15251–5150. |
| b. Special Permission Filing (per filing) (waiver of any rule in Part 61 of the Commission's rules). | 159 & Corres | 600 | CQK | Federal Communications Commission, Common Carrier Tariff Filings, P.O. Box 358150, Pittsburgh, PA 15251–5150. |
| c. Waiver of Part 69 Tariff Rules. | 159 & Corres | 600 | CQK | Federal Communications Commission, Common Carrier Tariff Filings, P.O. Box 358150, Pittsburgh, PA 15251–5150. |
| 5. Accounting and Audits: | | | | |
| a. Field Audits | N/A | 75,680 | BMA | Carriers will be billed. |
| b. Review of Attest Audit | N/A | 41,310 | BLA | Carriers will be billed. |
| c. Review of Depreciation Update Study (single state). | 159 & Written Study. | 25,015 | BKA | Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| (1) Each Additional State. | Same as 5c ... | 830 | CVA | Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140. |
| d. Interpretation of Accounting Rules (per request). | 159 & Corres | 3,510 | BCA | Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140. |
| e. Petition for Waiver (per petition) (waiver of Part 69 rules and Part 32 accounting rules, Part 36 separation rules, Part 43 reporting requirements, Part 64 cost allocation rules, Part 65 rate of return & rate base rules. | 159 & Corres | 5,665 | BEA | Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140. |

[61 FR 41979, Aug. 13, 1996; 61 FR 44176, Aug. 28, 1996]

## § 1.1106 Schedule of charges for applications and other filings in the cable television services.

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. CARS Construction Permit ..... | 327 ..... | 190 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 2. CARS Modification ..... | 327 ..... | 190 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 3. CARS License Renewal ..... | 327 ..... | 190 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 4. CARS License Agreement ..... | 327 ..... | 190 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 5. CARS Transfer of Control ..... | 327 ..... | 190 | TIC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 6. Special Temporary Authorization. | 159 & Corres | 125 | TGC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 7. Cable Special Relief ..... | 159 & Corres | 960 | TQC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 8. 76.12 Registration Statement | 159 & Corres | 45 | TAC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 9. Aeronautical Frequency Usage Notification. | 159 & Corres | 45 | TAC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 10. Aeronautical Frequency Usage Waiver. | 159 & Corres | 45 | TAC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |
| 11. Pole Attachment Complaints Filing Fee. | 159 & Corres | 150 | TPC | Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205. |

[61 FR 41979, Aug. 13, 1996]

## § 1.1107 Schedule of charges for applications and other filings in the international services.

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 1. International Fixed Public Radio (Public & Control Stations): | | | | |
| a. Initial Construction Permit (per station). | 159 & 407 ..... | 620 | CSN | Federal Communications Commission, International Bureau, Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| b. Assignment or Transfer (per application). | 702 or 704 ..... | 620 | CSN | Federal Communications Commission, International Bureau, Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Renewal (per license) ..... | 405 ..... | 450 | CON | Federal Communications Commission, International Bureau, Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Modification (per station) | 159 & 403 ..... | 450 | CON | Federal Communications Commission, International Bureau, Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Extension of Construction Authorization (per station). | 701 ..... | 225 | CKN | Federal Communications Commission, International Bureau, Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Special Temporary Authority or Request for Waiver (per request). | 159 & Corres | 225 | CKN | Federal Communications Commission, International Bureau, Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 2. Section 214 Applications: | | | | |
| a. Overseas Cable Construction. | 159 & Corres | 11,090 | BIT | Federal Communications Commission, International Bureau, Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| b. Cable Landing License: | | | | |
| (1) Common Carrier ..... | 159 & Corres | 1,250 | CXT | Federal Communications Commission, International Bureau, Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| (2) Non-Common Carriers. | 159 & Corres | 12,335 | BJT | Federal Communications Commission, International Bureau, Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| c. All other International 214 Applications. | 159 & Corres | 745 | CUT | Federal Communications Commission, International Bureau, Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| d. Special Temporary Authority (all services). | 159 & Corres | 745 | CUT | Federal Communications Commission, International Bureau, Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| e. Assignments or Transfers (all services). | 159 & Corres | 745 | CUT | Federal Communications Commission, International Bureau, Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115. |
| 3. Fixed Satellite Transmit/Receive Earth Stations: | | | | |
| a. Initial Application (per station). | 159 & 493 ..... | 1,855 | BAX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Modification of License (per station). | 159 & 493 ..... | 130 | CGX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Assignment or Transfer: | | | | |
| (1) First Station on Application. | 702 & 704 ..... | 365 | CNX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| (2) Each Additional Station. | Same as 10c(i). | 125 | CFX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Developmental Station (per station). | 159 & 493 ..... | 1,215 | CWX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Renewal of License (per station). | 405 ..... | 130 | CGX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | 159 & Corres | 130 | CGX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Amendment of Application (per station). | 159 & Corres | 130 | CGX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| h. Extension of Construction Permit (per station). | 701 ..... | 130 | CGX | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 4. Fixed Satellite Small Transmit/Receive Earth Stations (2 meters or less operating in the 4/6 GHz frequency band): | | | | |
| a. Lead Application ..... | 159 & 493 ..... | 4,110 | BDS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| b. Routine Application (per station). | 159 & 493 ..... | 45 | CAS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Modification of License (per station). | 159 & 493 ..... | 130 | CGS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Assignment or Transfer: | | | | |
| (1) First Station on Application. | 702 or 704 ..... | 365 | CNS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| (2) Each additional station. | 702 or 704 ..... | 45 | CAS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Developmental Station (per station). | 159 & 493 ..... | 1,215 | CWS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Renewal of License (per station). | 405 ..... | 130 | CGS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | 159 & Corres | 130 | CGS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| h. Amendment of Application (per station). | 159 & Corres | 130 | CGS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| i. Extension of Construction Permit (per station). | 701 ..... | 130 | CGS | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 5. Receive Only Earth Stations: | | | | |
| a. Initial Application for Registration. | 159 & 493 ..... | 280 | CMO | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Modification of License or Registration (per station). | 159 & 493 ..... | 1,645 | CGO | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Assignment or Transfer: | | | | |
| (1) First Station on Application. | 702 & 704 ..... | 365 | CNO | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| (2) Each Additional Station. | Same as 12c(i). | 125 | CFO | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Renewal of License (per station). | 405 ..... | 130 | CGO | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Amendment of Application | 159 & Corres | 130 | CGO | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Extension of Construction Permit (per station). | 701 ..... | 130 | CGO | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Waivers (per request) ..... | 159 & Corres | 130 | CGO | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 6. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems: | | | | |
| a. Initial Application (per system). | 159 & 493 ..... | 6,840 | BGV | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Modification of License (per system). | 159 & 493 ..... | 130 | CGV | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Assignment or Transfer of System. | 702 & 704 ..... | 1,830 | CZV | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Development Station ..... | 159 & 493 ..... | 1,215 | CWV | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Renewal of License (per system). | 159 & 405 ..... | 130 | CGV | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | 159 & Corres | 130 | CGV | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Amendment of Application (per system). | 159 & Corres | 130 | CGV | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| h. Extension of Construction Permit (per system). | 159 & 701 ..... | 130 | CGV | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 7. Mobile Satellite Earth Stations: | | | | |
| a. Initial Application of Blanket Authorization. | 159 & 493 ..... | 6,840 | BGB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Initial Application for Individual Earth Station. | 159 & 493 ..... | 1,645 | CYB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Modification of License (per system). | 159 & 493 ..... | 130 | CGB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Assignment or Transfer (per system). | 159 & 702 or 159 & 704. | 1,830 | CZB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Developmental Station ..... | 159 & 493 ..... | 1,215 | CWB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Renewal of License (per system). | 159 & 405 ..... | 130 | CGB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | 159 & Corres | 130 | CGB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| h. Amendment of Application (per system). | 159 & Corres | 130 | CGB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| i. Extension Construction Permit (per system). | 159 & 701 ..... | 130 | CGB | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 8. Radio Determination Satellite Earth Stations: | | | | |
| a. Initial Application of Blanket Authorization. | 159 & 493 ..... | 6,840 | BGH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| b. Initial Application for Individual Earth Station. | 159 & 493 ..... | 1,645 | CYH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| c. Modification of License (per system). | 159 & 493 ..... | 130 | CGH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| d. Assignments or Transfer (per system). | 159 & 702 or 159 & 704. | 1,830 | CZH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| e. Developmental Station ..... | 159 & 493 ..... | 1,215 | CWH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| f. Renewal of License (per system). | 159 & 405 ..... | 130 | CGH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | 159 & Corres | 130 | CGH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| h. Amendment of Application (per system). | 159 & Corres | 130 | CGH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| i. Extension of Construction Permit (per system). | 159 & 701 ..... | 130 | CGH | Federal Communications Commission, International Bureau, Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160. |
| 9. Space Stations (Geostationary): | | | | |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| a. Application for Authority to Construct. | 159 & Corres | 2,470 | BBY | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| b. Application for Authority to Launch & Operate: | | | | |
| (1) Initial Application ..... | 159 & Corres | 85,045 | BNY | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| (2) Replacement Satellite. | 159 & Corres | 85,045 | BNY | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| c. Assignment or Transfer (per satellite). | 159 & 702 or 159 & 704. | 6,075 | BFY | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| d. Modification ..... | 159 & Corres | 6,075 | BFY | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | 159 & Corres | 610 | CRY | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| f. Amendment of Application | 159 & Corres | 1,215 | CWY | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| g. Extension of Construction Permit/Launch Authorization (per request). | 159 & Corres | 610 | CRY | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| 10. Space Stations (Low-Earth Orbit Satellite Systems): | | | | |
| a. Application for Authority to Construct (per system of technically identical satellites). | 159 & Corres | 7,290 | CZW | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| b. Application for Authority to Launch and Operate (per system of technically identical satellites). | 159 & Corres | 255,080 | CLW | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| c. Assignment or Transfer (per request). | 159 & 702 or 159 & 704. | 7,290 | CZW | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| d. Modification (per request) | 159 & Corres | 18,220 | CGW | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request). | 159 & Corres | 1,830 | CXW | Federal Communications Commission, International Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| f. Amendment of Application (per request). | 159 & Corres | 3,645 | CAW | Federal Communications Commission, International, Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| g. Extension of Construction Permit/Launch Authorization (per request). | 159 & Corres | 1,830 | CXW | Federal Communications Commission, International, Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| 11. Direct Broadcast Satellites | | | | |
| a. Authorization to Construct or Major Modification (per request). | 159 & Corres | 2,470 | MTD | Federal Communications Commission, International, Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| b. Construction Permit and Launch Authority (per request). | 159 & Corres | 23,950 | MXD | Federal Communications Commission, International, Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| c. License to Operate (per request). | 159 & Corres | 690 | MPD | Federal Communications Commission, International, Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| d. Special Temporary Authorization (per request). | 159 & Corres | 125 | MGD | Federal Communications Commission, International, Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |
| e. Hearing (New and major/minor change comparative construction permit hearings; comparative license renewal hearing) (per request). | 159 & Corres | 8,215 | MWD | Federal Communications Commission, International, Bureau, Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210. |

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| 12. International Broadcast Stations: | | | | |
| a. New Station and Facilities Change Construction Permit (per application). | 159 & 309 ..... | 2,075 | MSN | Federal Communications Commission, International, Bureau, Notifications, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| b. New License (per application). | 159 & 310 ..... | 470 | MNN | Federal Communications Commission, International, Bureau, Notifications, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| c. License Renewal (per application). | 159 & 311 ..... | 120 | MFN | Federal Communications Commission, International, Bureau, Notifications, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| d. License Assignment or Transfer of Control (per station license). | 159 & 314 or 315 or 316. | 75 | MCN | Federal Communications Commission, International, Bureau, Notifications, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| e. Frequency Assignment and Coordination (per frequency hour). | 159 & Corres | 45 | MAN | Federal Communications Commission, International, Bureau, Notifications, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| f. Special Temporary Authorization (per request). | 159 & Corres | 125 | MGN | Federal Communications Commission, International, Bureau, Notifications, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| 13. Permit to Deliver Program to Foreign Broadcast Stations (per application): | | | | |
| a. Commercial Television Stations. | 159 & 308 ..... | 70 | MBT | Federal Communications Commission, International, Bureau, Notifications, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| b. Commercial AM or FM Radio Station. | 159 & 308 ..... | 70 | MBR | Federal Communications Commission, International, Bureau, Notifications, P.O. Box 358175, Pittsburgh, PA 15251–5175. |
| 14. Recognized Private Operating Status (per application). | 159 & Corres | 745 | CUG | Federal Communications Commission, International, Bureau, Telecommunicational, P.O. Box 358115, Pittsburgh, PA 15251–5115. |

[61 FR 41980, Aug. 13, 1996; 61 FR 44176, Aug. 28, 1996]

### §1.1108 Attachment of charges.

The charges required to accompany a request for the Commission regulatory services listed in §§1.1102 through 1.1106 of this subpart will not be refundable to the applicant irrespective of the Commission's disposition of that request. Return or refund of charges will be made in certain limited instances as set out at §1.1112 of this subpart.

[52 FR 5289, Feb. 20, 1987. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### §1.1109 Payment of charges.

(a) Electronic fee payments do not require the use of a FCC Form 159, Remittance Advice. An electronic fee payment must be made on or before the day the application and appropriate processing form are filed.

(b) The schedule of fees for applications and other filings lists those applications and other filings that must be accompanied by a FCC Form 159, Remittance Advice. A separate FCC Form 159 will not be required once the information requirements of that form (payor information) is incorporated into the underlying application form.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

NOTE: This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See §1.1118 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/Office by the prescribed deadline. If an additional fee is required, the

original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission request for additional or corrected information to their resubmission.

(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely payment of these charges are contingent and subject to recession.

(e) Should the staff change the status of an application, resulting in an increase in the fee due, the applicant will be billed for the remainder under the conditions established by § 1.110(b) of the rules.

NOTE: Due to the statutory requirements applicable to tariff filings, the procedures for handling tariff filings may vary from the procedures set out in the rules.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40888, Oct. 19, 1988; 55 FR 19171, May 8, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### § 1.1110 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, on money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa or MasterCard credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (i.e., checks with a third party as maker or endorser) will not be accepted.

(1) Specific procedures for electronic payment will be announced by Public Notice. Applicants must submit a written request to the Commission for authorization to make electronic payments of a fee for applications and other filings, as follows.

(2) No electronic payment of an application fee will be accepted unless the payor has obtained the written authorization of the Commission to submit application fees electronically. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing and the fee payment.

(3) Payments by wire transfer will be accepted. Prior to making a payment by wire, the payor shall obtain the approval of the Managing Director or his designee. A completed FCC Form 159 shall be submitted to the Managing Director or his designee prior to initiating the wire transfer.

(b) Applicants are required to submit one payment instrument (check, bank draft or money order) and FCC Form 155 with each application or filing. Multiple payment instruments for a single application or filing are not permitted. Except that a separate Fee Form (FCC Form 155) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form.

(c) The Commission may accept multiple money orders in payment of a fee for a single application where the fee exceeds the maximum amount for a money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below in paragraphs (d) (1) and (2) of this section.

(1) Payment by cashier's check may be required when a person or organization has made payment, on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.

(2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's check, the party's payment will not be accepted and its application or other filing will be returned.

(e) All fees collected will be paid into the general fund of the United States Treasury in accordance with Pub. L. 99–272.

(f) The Commission will furnish a stamped receipt of an application only upon request. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked ''copy'', submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. The copy will be date-stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished.

[52 FR 5289, Feb. 20, 1987; 52 FR 38232, Oct. 15, 1987, as amended at 53 FR 40888, Oct. 19, 1988; 55 FR 19171, May 8, 1990. Redesignated at 59 FR 30998, June 16, 1994, as amended at 59 FR 30999, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### §1.1111 Filing locations.

(a) Except as noted in this section applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§1.1102 through 1.1106.

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee to the Commission's lockbox bank at the address established in §1.1105.

(2) Bills for collection will be paid at the Commission's lockbox bank at the address for the appropriate service as established in §§1.1102 through 1.1106, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill and a FCC Form 159 to ensure proper credit.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to §1.1117(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. 158(d)(1) or §1.1113 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate service set forth in §§1.1102 through 1.1105.

(b) All materials must be submitted as one package. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations. Materials submitted at other than the location and address required by §0.401(b) and paragraph (a) of this section will be returned to the applicant or filer.

[55 FR 19171, May 8, 1990. Redesignated at 59 FR 30998, June 16, 1994, as amended at 59 FR 30999, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### §1.1112 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee and timely payment of bills issued by the Commission. As applied to checks, bank drafts and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check, bank draft or money order is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission

is notified that final payment has not been made, the application or filing will be:

(i) Dismissed and returned to the applicant;

(ii) Shall lose its place in the processing line;

(iii) And will not be accorded *nunc pro tunc* treatment if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection; and

(ii) Notify the grantee of this action; and

(iii) Not permit *nunc pro tunc* treatment for the resubmission of the application or filing if the relevant deadline has expired.

(3) Upon receipt of a notification of rescision of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a fee or issued a bill payable at a future date, further processing of the application or filing, or the grant of authority, shall be conditioned upon final payment of the fee, plus other required payments for late payments, by the date prescribed by the deferral decision or bill. Failure to comply with the terms of the deferral decision or bill shall result in the automatic dismissal of the submission or rescision of the Commission authorization for failure to meet the condition imposed by this subpart. The Commission reserves the right to return payments received after the date established on the bill and exercise the conditions attached to the application. The Commission shall:

(1) Notify the grantee that the authorization has been rescinded;

(i) Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization.

(2) Not permit *nunc pro tunc* treatment to applicants who attempt to refile after the original deadline for the underlying submission.

(c) Where the procedures outlined in paragraphs (a) and (b) of this section would not provide a meaningful incentive to pay a fee that is due or would not be a meaningful sanction for failure to pay such a fee, in the alternative to those procedures, the Commission may, in its discretion, withhold processing and/or grant of any other application or filing made by a person or organization who has failed to make full payment of any fee due under this subpart.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be due under this subpart. Such request shall inform the applicant/filer that failure to pay will result in the Commission's withholding action on any other application or request filed by the applicant. The staff shall also inform the applicant of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, the applicant fails to pay the fee in a timely manner, the staff may terminate the processing and/or withhold a grant of any other application or filing pending or later filed by the applicant, until the matter is resolved.

[52 FR 5289, Feb. 20, 1987, as amended at 55 FR 19171, May 8, 1990. Redesignated at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### § 1.1113 Return or refund of charges.

(a) The full amount of any fee submitted will be returned or refunded, as appropriate, in the following circumstances:

(1) When no fee is required for the application or other filing.

(2) When the fee processing staff or bureau/office determines that an insufficient fee has been submitted within 30 calendar days of receipt of the application or filing and the application or filing is dismissed.

(3) When the application is filed by an applicant who cannot fulfill a prescribed age requirement.

(4) When the Commission adopts new rules that nullify applications already

accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application.

(5) When a waiver is granted in accordance with this subpart.

NOTE: Payments in excess of an application fee will be refunded only if the overpayment is $8 or more.

(6) When an application for new or modified facilities is not timely filed in accordance with the filing window as established by the Commission in a public notice specifying the earliest and latest dates for filing such applications.

(b) Applicants in the Mass Media Services designated for comparative hearings will be entitled to a grant without payment of the hearing fee or a refund of the hearing fee paid in the following circumstances.

(1) The application is granted without being designated for hearing;

(2) The application is dismissed, voluntarily or involuntarily, prior to designation for hearing, in the order designating the case for hearing, or for failure to file a Notice of Appearance (see §1.221 of this part);

(3) When only one applicant files a Notice of Appearance and pays the hearing fee, that single remaining applicant will be entitled to a refund of the hearing fee upon request if it is immediately grantable or if all issues specified in the designation order and requiring resolution can be deleted. See §1.229 of this part.

(4) When a settlement agreement filed with the presiding judge by the Notice of Appearance deadline (see §1.221 of this part) provides for the dismissal of all but one of the applicants, and the single remaining applicant is immediately grantable, no hearing fee is due. However, if the applicant cannot be granted without resolution of issues specified in the designation order, it must pay the hearing fee. That payment will be refunded upon request if all outstanding issues can be deleted. See §1.229 of this part.

(5) However, under paragraphs, (c) (3) or (4) of this section, hearing fees will be retained by the Commission in any case requiring a decision on the merits of an applicant's post-designation amendment or evidentiary showing, whether by Summary Decision or otherwise. See §§1.251 and 1.267 of this part.

(c) Applicants in the Mass Media Services for first-come, first-served construction permits will be entitled to a refund of the fee, if, within fifteen days of the issuance of a Public Notice indicating that there is a previously filed pending application for the same vacant channel, such application notifies the Commission that they no longer wish their application to remain on file behind the first applicant and any other applicants filed before his or her application, and the applicant specifically requests a refund of the fee paid and dismissal of his or her applicant.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 56 FR 795, Jan. 9, 1991; 56 FR 56602, Nov. 6, 1991. Redesignated at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### §1.1114 General exemptions to charges.

No fee established in §§1.1102 through 1.1106 of this subpart, unless otherwise qualified herein, shall be required for:

(a) Applications filed for the sole purpose of modifying an existing authorization (or a pending application for authorization) in order to comply with new or additional requirements of the Commission's rules or the rules of another Federal agency. However, if the applicant also requests an additional modification, renewal, or other action, the appropriate fee for such additional request must accompany the application. Cases in which a fee will be paid include applications by FM and TV licensees or permittees seeking to upgrade channel after a rulemaking.

(b) Applicants in the Special Emergency Radio and Public Safety Radio Services that are government entities or nonprofit entities. Applicants claiming nonprofit status must include a current Internal Revenue Service Determination Letter documenting this nonprofit status.

(c) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees who certify that

the station will operate or does operate in accordance with § 73.503 of the rules.

(d) Applicants, permittees, or licensees qualifying under paragraph (c) of this section requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service) private radio service, or common carrier radio communications service otherwise requiring a fee, if the radio service is used in conjunction with the noncommercial educational broadcast station on a noncommercial educational basis.

(e) Other applicants, permittees, or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under paragraph (c) of this section, may be exempt from filing fees, or be entitled to a refund, in the following circumstances.

(1) An applicant is exempt from filing fees if it is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant for a translator or low power television station that proposes a noncommercial educational service will be entitled to a refund of fees paid for the filing of the application when, after grant, it provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission.

(3) An applicant that has qualified for a fee refund under paragraph (e)(2) of this section and continues to operate as a noncommercial education station is exempt from fees for broadcast auxiliary stations (subparts D, E, and F of part 74) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(4) An applicant that is the licensee of an instructional television fixed station (§ 74.901 *et seq.*) is exempt from filing fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

(f) Applicants, permittees or licensees who qualify as governmental entities. For purposes of this exemption a governmental entity is defined as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(g) Applications for Restricted Radiotelephone Operator Permits where the applicant intends to use the permit solely in conjunction with duties performed at radio facilities qualifying for fee exemption under paragraphs (c), (d), or (e) of this section.

NOTE: Applicants claiming exemptions under the terms of this subpart must certify as to their eligibility for the exemption through a cover letter accompanying the application or filing. This certification is not required if the applicable FCC Form requests the information justifying the exemption.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990; 56 FR 56602, Nov. 6, 1991. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### § 1.1115 Adjustments to charges.

(a) The Schedule of Charges established by sections 1.1102 through 1.1106 of this subpart shall be adjusted by the Commission on October 1, 1993 and every two years thereafter.

(1) The fees will be adjusted by the Commission to reflect the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) from the date of enactment of the authorizing legislation (December 19, 1989) to the date of adjustment, and every two years thereafter, to reflect the percentage change in the CPI–U in the period between the enactment date and the adjustment date.

(2) Adjustments based upon the percentage change in the CPI–U will be applied against the base fees as enacted or amended by Congress. Adjustments

will not be calculated by using the previously adjusted fee as the base.

(b) Increases or decreases in charges will apply to all categories of fees covered by this subpart. Individual fees will not be adjusted until the increase or decrease, as determined by the net change in the CPI–U since the date of enactment of the authorizing legislation, amounts to at least $5 in the case of fees under $100, or 5% or more in the case of fees of $100 or greater. All fees will be adjusted upward to the next $5 increment.

(c) Adjustments to fees made pursuant to these procedures will not be subject to notice and comment rulemakings, nor will these decisions be subject to petitions for reconsideration under §1.429 of the rules. Requests for modifications will be limited to correction of arithmetical errors made during an adjustment cycle.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### §1.1116 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under §1.1108(b) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

(1) A defective fee may be corrected by resubmitting the application or other filing, together with the entire correct fee.

(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct fee will be considered the date of filing. However, in cases where the fee payment fails due to error of the applicant's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(b) Applications or filings accompanied by insufficient fees or no fees which are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing at the Commission. A penalty charge of 25 percent of the amount due will be added to each bill. Any Commission actions taken prior to timely payment of this bill are contingent and subject to rescission.

(c) Applicants to whom a deferral of payment is granted under the terms of this subsection will be billed for the amount due plus a charge equalling 25 percent of the amount due. Any Commission actions taken prior to timely payment of these charges are contingent and subject to rescission.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### §1.1117 Petitions and applications for review.

(a) The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.

(b) Requests for waivers or deferrals will only be considered when received from applicants acting in respect to their own applications. Requests for waivers or deferrals of entire classes of services will not be considered.

(c) Petitions for waivers, deferrals, fee determinations, reconsideration and applications for review will be acted upon by the Managing Director. Petitions and applications for review submitted with a fee must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§1.1102 through 1.1105. If no fee payment is required, and the matter is within the scope of the fee rules in this subpart, the petition or application for review should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

(d) Deferrals of fees will be granted for an established period of time not to exceed six months.

(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 155. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1108 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.

[52 FR 5289, Feb. 20, 1987, as amended at 55 FR 19172, May 8, 1990; 55 FR 38065, Sept. 17, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994, as further amended at 59 FR 30999, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### § 1.1118 Error claims.

(a) Applicants who wish to challenge a staff determination of an insufficient fee may do so in writing. These claims should be addressed to the same location as the original submission marked ''Attention Fee Supervisor''.

(b) Actions taken by the Fee Section staff are subject to the reconsideration and review provisions of §§ 1.106 and 1.115 of this part, EXCEPT THAT reconsideration and/or review will only be available where the applicant has made the full and proper payment of the underlying fee as required by this subpart.

(1) Petitions for reconsideration and/or applications for review submitted by applicants that have not made the full and proper fee payment will be dismissed; and

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988. Redesignated at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### § 1.1119 Billing procedures.

(a) The fees required for the International Telecommunications Settlements (§ 1.1103(19) of this subpart) and Common Carrier Field Audits (§ 1.1105(21) (a) and (b) of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (see generally §§ 1.1102, 1.1104, 1.1105 of this subpart) that the applicant believes is of an urgent or emergency nature and are filed directly with the appropriate Bureau or Office should not be paid with the filing of the request with that Bureau or Office.

(b) In these cases, the appropriate fee will be determined by the Commission and the filer will be billed for that fee. The bill will set forth the amount to be paid, the date on which payment is due, and the address to which the payment should be submitted. See also § 1.1111 of this subpart.

[55 FR 19172, May 8, 1990, as amended at 58 FR 68541, Dec. 28, 1993. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995]

### § 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in title VI, section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 397), enacting section 9 of the Communications Act, 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees from designated regulatees in order to recover the costs of certain of its regulatory activities in the private radio, mass media, common carrier, and cable television services.

[59 FR 30999, June 16,1994]

### § 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

| Exclusive use services (per license) | Fee amount | Address |
|---|---|---|
| 1. Land Mobile (Above 470 MHz, Base Station and SMRS)(47 CFR Part 90): | | |
| (a) 800 MHz New, Renewal, Reinstatement (FCC 600) | $10.00 | FCC, 800 MHz, P.O. Box 358235, Pittsburgh, PA 15251–5235 |
| (b) 900 MHz New, Renewal, Reinstatement (FCC 600) | 10.00 | FCC, 900 MHz, P.O. Box 358240, Pittsburgh, PA 15251–5240 |

| Exclusive use services (per license) | Fee amount | Address |
|---|---|---|
| (c) 470–512,800,900, 220 MHz, 220 MHz Nationwide Renewal (FCC 574R, FCC 405A). | 10.00 | FCC, 470–512, P.O. Box 358245, Pittsburgh, PA 15251–5245 |
| (d) Correspondence Blanket Renewal (470–512,800,900,220 MHz) (Remittance Advice, Correspondence). | 10.00 | FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305 |
| (e) 220 MHz New, Renewal, Reinstatement (FCC 600) | 10.00 | FCC, 220 MHz, P.O. Box 358360, Pittsburgh, PA 15251–5360 |
| (f) 470–512 MHz New, Renewal, Reinstatement (FCC 600). | 10.00 | FCC, 470–512, P.O. Box 358810, Pittsburgh, PA 15251–5810 |
| (g) 220 MHz Nationwide New, Renewal, Reinstatement (FCC 600). | 10.00 | FCC, Nationwide, P.O. Box 358820, Pittsburgh, PA 15251–5820 |
| 2. Microwave (47 CFR Part 101): | | |
| (a) Microwave New, Renewal, Reinstatement (FCC 415). | 10.00 | FCC, Microwave, P.O. Box 358250, Pittsburgh, PA 15251–5250 |
| (b) Microwave Renewal (FCC 402R) | 10.00 | FCC, Microwave, P.O. Box 358255, Pittsburgh, PA 15251–5255 |
| (c) Correspondence Blanket Renewal (Microwave) (Remittance Advice, Correspondence). | 10.00 | FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305 |
| 3. Shared Use Services: | | |
| (a) Land Transportation (LT) New, Renewal, Reinstatement (FCC 600). | 5.00 | FCC, Land Trans., P.O. Box 358215, Pittsburgh, PA 15251–5215 |
| (b) Business (Bus.) New, Renewal, Reinstatement (FCC 600). | 5.00 | FCC, Business, P.O. Box 358220, Pittsburgh, PA 15251–5220 |
| (c) Other Industrial (OI) New, Renewal, Reinstatement (FCC 600). | 5.00 | FCC, Other Indus., P.O. Box 358225, Pittsburgh, PA 15251–5225 |
| (d) General Mobile Radio Service (GMRS) New, Renewal, Reinstatement (FCC 574). | 5.00 | FCC, GMRS, P.O. Box 358230, Pittsburgh, PA 15251–5230 |
| (e) Business, Other Industrial, Land Transportation, GMRS Renewal (FCC 574R, FCC 405A). | 5.00 | FCC, Bus.,OI,LT,GMRS, P.O. Box 358245, Pittsburgh, PA 15251–5245 |
| (f) Ground New, Renewal, Reinstatement (FCC 406) | 5.00 | FCC, Ground, P.O. Box 358260, Pittsburgh, PA 15251–5260 |
| (g) Coast New, Renewal, Reinstatement (FCC 503) | 5.00 | FCC, Coast, P.O. Box 358265, Pittsburgh, PA 15251–5265 |
| (h) Ground Renewal (FCC 452R) | 5.00 | FCC, Ground, P.O. Box 358270, Pittsburgh, PA 15251–5270 |
| (i) Coast Renewal (FCC 452R) | 5.00 | FCC, Coast, P.O. Box 358270, Pittsburgh, PA 15251–5270 |
| (j) Ship New, Renewal, Reinstatement (FCC 506) | 5.00 | FCC, Ship, P.O. Box 358275, Pittsburgh, PA 15251–5275 |
| (k) Aircraft New, Renewal, Reinstatement (FCC 404) | 5.00 | FCC, Aircraft, P.O. Box 358280, Pittsburgh, PA 15251–5280 |
| (l) Ship Renewal (FCC 405B) | 5.00 | FCC, Ship, P.O. Box 358290, Pittsburgh, PA 15251–5290 |
| (m) Aircraft Renewal (FCC 405B) | 5.00 | FCC, Aircraft, P.O. Box 358290, Pittsburgh, PA 15251–5290 |
| (n) Correspondence Blanket Renewal (Bus.,OI,LT,GMRS) (Remittance Advice, Correspondence). | 5.00 | FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305 |
| (o) Correspondence Blanket Renewal (Ground) (Remittance Advice, Correspondence). | 5.00 | FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305 |
| (p) Correspondence Blanket Renewal (Coast) (Remittance Advice, Correspondence). | 5.00 | FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305 |
| (q) Correspondence Blanket Renewal (Aircraft) (Remittance Advice, Correspondence). | 5.00 | FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305 |
| (r) Correspondence Blanket Renewal (Ship) (Remittance Advice, Correspondence). | 5.00 | FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305 |
| 4. Amateur Vanity Call Signs | 5.00 | FCC, Amateur Vanity, P.O. Box 358924, Pittsburgh, PA 15251–5924 |
| 5. CMRS Mobile Services (per unit) | .24 | FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| 6. CMRS Messaging Services (per unit) | .03 | FCC, Messaging, P.O. Box 358835, Pittsburgh, PA 15251–5835 |

[62 FR 37422, July 11, 1997]

## § 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

| | Fee amount | Address |
|---|---|---|
| I. Radio [AM and FM] (47 CFR Part 73: | | |
| 1. Group 1 | $2,000 | FCC, Radio, P.O. Box 358835, Pittsburgh, PA, 15251–5835 |
| 2. Group 2 | 1,800 | |
| 3. Group 3 | 1,600 | |
| 4. Group 4 | 1,400 | |
| 5. Group 5 | 1,200 | |
| 6. Group 6 | 1,000 | |
| 7. Group 7 | 800 | |
| 8. Group 8 | 600 | |
| 9. Group 9 | 400 | |
| 10. Group 10 | 200 | |
| 11. AM Construction Permits | 195 | |
| 12. FM Construction Permits | 950 | |
| II. TV (47 CFR Part 73) VHF Commercial: | | |
| 1. Markets 1 thru 10 | 35,025 | FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| 2. Markets 11 thru 25 | 28,450 | |
| 3. Markets 26 thru 50 | 18,600 | |
| 4. Markets 51 thru 100 | 9,850 | |
| 5. Remaining Markets | 2,725 | |
| 6. Construction Permits | 4,800 | |
| III. UHF Commercial:. | | |
| 1. Markets 1 thru 10 | 16,850 | FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| 2. Markets 11 thru 25 | 13,475 | |
| 3. Markets 26 thru 50 | 8,750 | |
| 4. Markets 51 thru 100 | 4,725 | |
| 5. Remaining Markets | 1,350 | |
| 6. Construction Permits | 2,975 | |
| IV. Satellite UHF/VHF Commercial: | | |
| 1. All Markets | 950 | FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| 2. Construction Permits | 345 | |
| V. Low Power TV, TV/FM Translator,& TV/FM Booster (47 CFR Part 74). | 220 | FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| VI. Broadcast Auxiliary | 25 | FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| VII. Multipoint Distribution | 215 | FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251–5835 |

[62 FR 37423, July 11, 1997]

## § 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

| | Fee amount | Address |
|---|---|---|
| I. Radio Facilities: | | |
| 1. Microwave (Domestic Public Fixed) | $10 | FCC, Common Carrier, P.O. Box 358680, Pittsburgh, PA 15251–5680 |
| II. Carriers: | | |
| 1. Interstate Telephone Service Providers, (per dollar contributed to TRS Fund). | .000116 | FCC, Carriers, P.O. Box 358835, Pittsburgh, PA |

[62 FR 37423, July 11, 1997]

## § 1.1155 Schedule of regulatory fees and filing locations for cable television services.

| | Fee amount | Address |
|---|---|---|
| 1. Cable Antenna Relay Service | $65 | FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| 2. Cable TV System (per subscriber) | .54 | |

[62 FR 37423, July 11, 1997]

### §1.1156 Schedule of regulatory fees and filing locations for international services.

| | Fee amount | Address |
|---|---|---|
| I. Radio Facilities: | | |
| 1. International (HF) Broadcast | $390 | FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| 2. International Public Fixed | 310 | FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| II. Space Stations (Geosynchronous Orbit) | 97,975 | FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| III. Low Earth Orbit Satellite | 135,675 | FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| IV. Earth Stations; Transmit/Receive and Transmit Only (per authorization or registration). | 515 | FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835 |
| V. Carriers: | | |
| 1. International Bearer Circuits (per active 64KB circuit or equivalent). | 5.00 | FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835 |

[62 FR 37423, July 11, 1997]

### §1.1157 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under §§1.1152 through 1.1156, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the wireless radio services. (1) Any regulatory fee submitted with an application in the wireless radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the wireless radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in §1.1160, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the wireless radio service will result in the return of the accompanying application, including an application, for which the Commission has assigned a specific filing deadline.

(b)(1) Payments of standard regulatory fees, applicable to mass media, common carrier, cable and international services, shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the FEDERAL REGISTER.

(2) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments or in a single payment on a date certain as announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the FEDERAL REGISTER.

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result in the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled.

[60 FR 34031, June 29, 1995]

**§ 1.1158 Form of payment for regulatory.**

Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa or Mastercard credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

(a) Upon authorization from the Commission following a written request, electronic fund transfer (EFT) payment of a regulatory fee may be made as follows:

(1)(i) The payor may instruct its bank to make payment of the regulatory fee directly to the Commission's lockbox bank, or

(ii) The payor may authorize the Commission to direct its lockbox bank to withdraw funds directly from the payor's bank account.

(2) No EFT payment of a regulatory fee will be accepted unless the payor has obtained the written authorization of the Commission to submit regulatory fees electronically. Procedures for electronic payment of regulatory fees will be announced by Public Notice. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures for electronic fee payment will result in the return of the fee payment, and a penalty fee of 25 percent if the subsequent refiling of the fee payment is late. Failure to comply will also subject the payor to the penalties set forth in § 1.1164.

(b) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(c) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier, international, and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(d) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the wireless radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card number and date of expiration and the payor's signature in the appropriate blocks on FCC Form 159 will result in rejection of the credit card payment.

[60 FR 34031, June 29, 1995]

**§ 1.1159 Filing locations and receipts for regulatory fees.**

(a) Regulatory fee payments must be directed to the location and address set forth in §§ 1.1152 through 1.1156 for the specific category of fee involved. Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to §§ 1.1152 through 1.1156 of the rules are to be filed with the Commission's lockbox bank in the manner set forth in §§ 1.1152 through 1.1156 for payment of the fee

subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in §§1.1152 through 1.1156.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked ''copy'' and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

[60 FR 34032, June 29, 1995]

### §1.1160 Refunds of regulatory fees.

(a) Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regualtory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in the appropriate block of the FCC Form 159.

(2) In the case of advance payment of regulatory fees, subject to §1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless;

(ii) When a licensee in the wireless radio service surrenders the license or other authorization subject to a fee payment to the Commission; or

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with §1.1166.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

[60 FR 34032, June 29, 1995]

### §1.1161 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing, for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the regulatory fee. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment of the regulatory fee has not been made, the application or filing:

(i) Will be dismissed and returned;

(ii) Shall lose its place in the processing line; and

(iii) Will not be treated as timely filed if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization or other filing, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to

meet the condition imposed by this subsection;

(ii) Notify the grantee of this action; and

(iii) Treat as late filed any application resubmitted after the original deadline for filing the application.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

(1) Notify the grantee that the authorization has been rescinded. Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization; and

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c) Where the procedures described in paragraphs (a) and (b) of this section would not provide a meaningful incentive to pay a regulatory fee that is due or would not be a meaningful sanction for failure to pay such a fee, the Commission may, in its discretion, whether the regulatory fee is required to be paid with an application for an instrument of authorization or otherwise, withhold processing and/or grant of any application or filing made by a person or organization who has failed to make full payment of any regulatory fee due.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff may terminate processing and/or withhold any grant or petition requested by the person or organization subject to the fee payment requirement, until the matter is resolved.

[60 FR 34032, June 29, 1995]

### § 1.1162 General exemptions from regulatory fees.

No regulatory fee established in §§ 1.1152 through 1.1156, unless otherwise qualified herein, shall be required for: (a) Applicants, permittees or licensees in the Amateur Radio Service, *except that* any person requesting a vanity call-sign shall be subject to the payment of a regulatory fee, as prescribed in § 1.1152.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants and permittees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as: an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. 501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

(f) Applicants, permittees, or licensees qualifying under paragraph (e) of this section requesting Commission authorization in any other mass media

radio service (except the international broadcast (HF) service), wireless radio service, common carrier radio service, or international radio service requiring payment of a regulatory fee, if the service is used in conjunction with their noncommercial educational broadcast station on a noncommercial educational basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under paragraph (e) of this section, may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating or proposing to operate a noncommercial educational service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under §1.1160 and operating as a noncommercial education station, is exempt from fees for broadcast auxiliary stations (subparts D, E, and F of part 74 of this chapter) or stations in the wireless radio, common carrier, or international services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(h) An applicant, permittee or licensee that is the licensee of an instructional television fixed station (§§74.901 through 74.996 of this chapter) is exempt from regulatory fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

(i) Applications filed in the wireless radio service for the sole purpose of modifying an existing authorization (or a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

[60 FR 34033, June 29, 1995, as amended at 60 FR 34904, July 5, 1995]

### §1.1163 Adjustments to regulatory fees.

(a) For Fiscal Year 1995, the amounts assessed for regulatory fees are set forth in §§1.1152 through 1.1156.

(b) For Fiscal year 1996 and thereafter, the Schedule of Regulatory Fees, contained in §§1.1152 through 1.1156, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act. 47 U.S.C. 159. Adjustments to the fees established for any category of regulatory fee payment shall include projected cost increases or decreases and an estimate of the volume of licensees or units upon which the regulatory fee is calculated.

(c) The fees assessed shall:

(1) Be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Wireless Telecommunications Bureau, Mass Media Bureau, Common Carrier Bureau, Cable Services Bureau, International Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(2) Be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal

year for the performance of the activities described in paragraph (c)(1) of this section.

(d) The Commission shall by rule amend the Schedule of Regulatory Fees by proportionate increases or decreases that reflect, in accordance with paragraph (c)(2) of this section, changes in the amount appropriated for the performance of the activities described in paragraph (c)(1) of this section, for such fiscal year. Such proportionate increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of licensees or units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(e) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (c)(1) of this section. In making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additional deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

(f) In making adjustments to regulatory fees, the Commission will round such fees to the nearest $5.00 in the case of fees under $1,000.00, or to the nearest $25.00 in the case of fees of $1,000.00 or more.

[60 FR 34033, June 29, 1995]

### § 1.1164 Penalties for late or insufficient regulatory fee payments.

Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner. A timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. A payment will also be considered late filed if the payment instrument (check, money order, bank draft or credit card) is uncollectible.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases were a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

(d)(1) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with wireless radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(2) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to file a regulatory fee, the Commission will provide prior notice to the regulatee of such action and shall allow the licensee

no less than 60 days to either pay the fee or show cause why the payment assessed is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. *See* 47 U.S.C. 402(b)(5).

(4) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to section 3720A of the Internal Revenue Code, 31 U.S.C. 3717, and to the provisions of the Debt Collection Act, 31 U.S.C. 3717. *See* 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

[60 FR 34034, June 29, 1995]

### 1.1165 Payment by cashier's check for regulatory fees.

Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive final payment and such error is not excused by bank error.

[60 FR 34034, June 29, 1995]

### § 1.1166 Waivers, reductions and deferrals of regulatory fees.

The fees established by sections 1.1152 through 1.1156 may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in sections 1.1152 through 1.1156 of this subpart. If no fee payment is submitted and the matter is within the scope of the fee rules, the request should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) Deferrals of fees will be granted for a period of six months following the date that the fee is initially due.

(c) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(d) Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction and FCC Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Attention: Petitions, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251–5835.

[60 FR 34034, June 29, 1995]

### § 1.1167 Error claims related to regulatory fees.

(a) Challenges to determinations of an insufficient regulatory fee payment should be made in writing. challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked ''Attention: Fee Supervisor''. Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not relieve

licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment. Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

[60 FR 34035, June 29, 1995]

### § 1.1181 Authority to prescribe and collect fees for competitive bidding-related services and products.

Authority to prescribe, impose, and collect fees for expenses incurred by the government is governed by the Independent Offices Appropriation Act of 1952, as amended, 31 U.S.C. 9701, which authorizes agencies to prescribe regulations that establish charges for the provision of government services and products. Under this authority, the Federal Communications Commission may prescribe and collect fees for competitive bidding-related services and products as specified in § 1.1182.

[60 FR 38280, July 26, 1995]

### § 1.1182 Schedule of fees for products and services provided by the Commission in connection with competitive bidding procedures.

| Product or service | Fee amount | Payment procedure |
|---|---|---|
| On-line remote access 900 Number Telephone Service). | 2.30 per minute | Charges included on customer's long distance telephone bill. |
| Remote Bidding Software | $175.00 per package | Payment to auction contractor by credit card or check. (Public Notice will specify exact payment procedures.) |
| Bidder Information Package | First package free; $16.00 per additional package (including postage) to same person or entity. | Payment to auction contractor by credit card or check. (Public Notice will specify exact payment procedures.) |

[60 FR 38280, July 26, 1995]

## Subpart H—Ex Parte Communications

SOURCE: 52 FR 21052, June 4, 1987, unless otherwise noted.

GENERAL

### § 1.1200 Introduction.

(a) *Purpose.* To ensure the fairness and integrity of its decision-making, the Commission has prescribed rules to regulate *ex parte* presentations in Commission proceedings. These rules specify ''exempt'' proceedings, in which *ex parte* presentations may be made freely (§ 1.1204(b)), ''permit-but-disclose'' proceedings, in which *ex parte* presentations to Commission decision-making personnel are permissible but subject to certain disclosure requirements (§ 1.1206), and ''restricted'' proceedings in which *ex parte* presentations to and from Commission decision-making personnel are generally prohibited (§ 1.1208). In all proceedings, a certain period (''the Sunshine Agenda period'') is designated in which all presentations to Commission decision-making personnel are prohibited (§ 1.1203). The limitations on *ex parte* presentations described in this section are subject to certain general exceptions set forth in § 1.1204(a). Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice. Joint Boards may modify the *ex parte* rules in proceedings before them.

(b) Inquiries concerning the propriety of *ex parte* presentations should be directed to the Office of General Counsel.

[62 FR 15853, Apr. 3, 1997]

**§ 1.1202 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) *Presentation*. A communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this term are communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken. However, a status inquiry which states or implies a view as to the merits or outcome of the proceeding or a preference for a particular party, which states why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved, or which otherwise is intended to address the merits or outcome or to influence the timing of a proceeding is a presentation.

NOTE TO PARAGRAPH (A): A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an *ex parte* basis subject to the provisions of § 1.1204(a)(11).

(b) *Ex parte presentation*. Any presentation which:

(1) If written, is not served on the parties to the proceeding; or

(2) If oral, is made without advance notice to the parties and without opportunity for them to be present.

NOTE TO PARAGRAPH (B): Written communications include electronic submissions transmitted in the form of texts, such as by Internet electronic mail.

(c) *Decision-making personnel.* Any member, officer, or employee of the Commission, or, in the case of a Joint Board, its members or their staffs, who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisional process shall not be treated as a decision-maker with respect to that proceeding. Thus, any person designated as part of a separate trial staff shall not be considered a decision-making person in the designated proceeding. Unseparated Bureau or Office staff shall be considered decision-making personnel with respect to decisions, rules, and orders in which their Bureau or Office participates in enacting, preparing, or reviewing.

(d) *Party*. Unless otherwise ordered by the Commission, the following persons are parties:

(1) Any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

NOTE 1 TO PARAGRAPH (D): Persons who file mutually exclusive applications for services that the Commission has announced will be subject to competitive bidding or lotteries shall not be deemed parties with respect to each others' applications merely because their applications are mutually exclusive. Therefore, such applicants may make presentations to the Commission about their own applications provided that no one has

become a party with respect to their application by other means, e.g., by filing a petition or other opposition against the applicant or an associated waiver request, if the petition or opposition has been served on the applicant.

(2) Any person who files a complaint which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721, and the person who is the subject of such a complaint that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721;

(3) Any person who files a petition to revoke a license or other authorization or who files a petition for an order to show cause and the licensee or other entity that is the subject of the petition;

(4) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(5) Any other person who has otherwise been given formal party status in a proceeding; and

(6) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, members of the general public after the issuance of a notice of proposed rulemaking or other order as provided under § 1.1206(a) (1) or (2).

NOTE 2 TO PARAGRAPH (D): To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairman or individual Commissioners will not confer party status.

NOTE 3 TO PARAGRAPH (D): The fact that a person is deemed a party for purposes of this subpart does not constitute a determination that such person has satisfied any other legal or procedural requirements, such as the operative requirements for petitions to deny or requirements as to timeliness. Nor does it constitute a determination that such person has any other procedural rights, such as the right to intervene in hearing proceedings. The Commission or the staff may also determine in particular instances that persons who qualify as ''parties'' under § 1.1202(d) should nevertheless not be deemed parties for purposes of this subpart.

NOTE 4 TO PARAGRAPH (D): Individual listeners or viewers submitting comments regarding a pending broadcast application pursuant to § 1.1204(a)(8) will not become parties simply by service of the comments. The Mass Media Bureau may, in its discretion, make such a commenter a party, if doing so would be conducive to the Commission's consideration of the application or would otherwise be appropriate.

(e) *Matter designated for hearing.* Any matter that has been designated for hearing before an administrative law judge or which is otherwise designated for hearing in accordance with procedures in 5 U.S.C. 554.

[62 FR 15854, Apr. 3, 1997]

SUNSHINE PERIOD PROHIBITION

### § 1.1203 Sunshine period prohibition.

(a) With respect to any Commission proceeding, all presentations to decision-makers concerning matters listed on a Sunshine Agenda, whether *ex parte* or not, are prohibited during the period specified by paragraph (b) of this section:

(1) The presentation is exempt under § 1.1204(a);

(2) The presentation relates to settlement negotiations and otherwise complies with any *ex parte* restrictions in this subpart;

(3) The presentation occurs in the course of a widely attended speech or panel discussion and concerns a Commission action in an exempt or a permit-but-disclose proceeding that has been adopted (not including private presentations made on the site of a widely attended speech or panel discussion); or

(4) The presentation is made by a member of Congress or his or her staff, or by other agencies or branches of the federal government or their staffs in a proceeding exempt under § 1.1204 or subject to permit-but-disclose requirements under § 1.1206. If the presentation is of substantial significance and clearly intended to affect the ultimate decision, the presentation (or, if oral, a summary of the presentation) must be placed in the record of the proceeding by Commission staff or by the presenter in accordance with the procedures set forth in § 1.1206(b).

(b) The prohibition set forth in paragraph (a) of this section applies from the release of a public notice that a matter has been placed on the Sunshine Agenda until the Commission:

(1) Releases the text of a decision or order relating to the matter;

(2) Issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or

(3) Issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first.

[62 FR 15855, Apr. 3, 1997]

GENERAL EXEMPTIONS

### §1.1204 Exempt ex parte presentations and proceedings.

(a) *Exempt ex parte presentations.* The following types of presentations are exempt from the prohibitions in restricted proceedings (§1.1208), the disclosure requirements in permit-but-disclose proceedings (§1.1206), and the prohibitions during the Sunshine Agenda and circulation period prohibition (§1.1203):

(1) The presentation is authorized by statute or by the Commission's rules to be made without service, see, e.g., §1.333(d), or involves the filing of required forms;

(2) The presentation is made by or to the General Counsel and his or her staff and concerns judicial review of a matter that has been decided by the Commission;

(3) The presentation directly relates to an emergency in which the safety of life is endangered or substantial loss of property is threatened, provided that, if not otherwise submitted for the record, Commission staff promptly places the presentation or a summary of the presentation in the record and discloses it to other parties as appropriate.

(4) The presentation involves a military or foreign affairs function of the United States or classified security information;

(5) The presentation is to or from an agency or branch of the Federal Government or its staff and involves a matter over which that agency or branch and the Commission share jurisdiction provided that, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will, if not otherwise submitted for the record, be disclosed by the Commission no later than at the time of the release of the Commission's decision;

(6) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a telecommunications competition matter in a proceeding which has not been designated for hearing and in which the relevant agency is not a party provided that, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed by the Commission no later than at the time of the release of the Commission's decision;

NOTE 1 TO PARAGRAPH (A): Under paragraphs (a)(5) and (a)(6) of this section, information will be relied on and disclosure will be made only after advance coordination with the agency involved in order to ensure that the agency involved retains control over the timing and extent of any disclosure that may have an impact on that agency's jurisdictional responsibilities. If the agency involved does not wish such information to be disclosed, the Commission will not disclose it and will disregard it in its decision-making process, unless it fits within another exemption not requiring disclosure (e.g., foreign affairs). The fact that an agency's views are disclosed under paragraphs (a)(5) and (a)(6) does not preclude further discussions pursuant to, and in accordance with, the exemption.

(7) The presentation is between Commission staff and an advisory coordinating committee member with respect to the coordination of frequency assignments to stations in the private land mobile services or fixed services as authorized by 47 U.S.C. 332;

(8) The presentation is a written presentation made by a listener or viewer of a broadcast station who is not a party under §1.1202(d)(1), and the presentation relates to a pending application that has not been designated for hearing for a new or modified broadcast station or license, for renewal of a broadcast station license or for assignment or transfer of control of a broadcast permit or license;

(9) Confidentiality is necessary to protect persons making *ex parte* presentations from possible reprisals; or

(10) The presentation is requested by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence, or for resolution of issues, including possible settlement, subject to the following limitations:

(i) This exemption does not apply to restricted proceedings designated for hearing;

(ii) In restricted proceedings not designated for hearing, any new written information elicited from such request or a summary of any new oral information elicited from such request shall promptly be served by the person making the presentation on the other parties to the proceeding. Information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section. The Commission or its staff may waive the service requirement if service would be too burdensome because the parties are numerous or because the materials relating to such presentation are voluminous. If the service requirement is waived, copies of the presentation or summary shall be placed in the record of the proceeding and the Commission or its staff shall issue a public notice which states that copies of the presentation or summary are available for inspection. The Commission or its staff may determine that service or public notice would interfere with the effective conduct of an investigation and dispense with the service and public notice requirements;

(iii) If the presentation is made in a proceeding subject to permit-but-disclose requirements, disclosure must be made in accordance with the requirements of § 1.1206(b), provided, however, that the Commission or its staff may determine that disclosure would interfere with the effective conduct of an investigation and dispense with the disclosure requirement. As in paragraph (a)(10)(ii) of this section, information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section;

NOTE 2 TO PARAGRAPH (A): If the Commission or its staff dispenses with the service or notice requirement to avoid interference with an investigation, a determination will be made in the discretion of the Commission or its staff as to when and how disclosure should be made if necessary. *See Amendment of Subpart H, Part I*, 2 FCC Rcd 6053, 6054 ¶¶ 10–14 (1987).

(iv) If the presentation is made in a proceeding subject to the Sunshine period prohibition, disclosure must be made in accordance with the requirements of § 1.1206(b) or by other adequate means of notice that the Commission deems appropriate;

(v) In situations where new information regarding the merits is disclosed during settlement discussions, and the Commission or staff intends that the product of the settlement discussions will be disclosed to the other parties or the public for comment before any action is taken, the Commission or staff in its discretion may defer disclosure of such new information until comment is sought on the settlement proposal or the settlement discussions are terminated.

(11) The presentation is an oral presentation in a restricted proceeding requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay. A summary of the presentation shall promptly be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement.

(b) *Exempt proceedings.* Unless otherwise provided by the Commission or the staff pursuant to § 1.1200(a), *ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed with respect to the following proceedings, which are referred to as ''exempt'' proceedings:

(1) A notice of inquiry proceeding;

(2) A petition for rulemaking, except for a petition requesting the allotment of a broadcast channel (see also

§1.1206(a)(1)), or other request that the Commission modify its rules, issue a policy statement or issue an interpretive rule, or establish a Joint Board;

(3) A tariff proceeding (including directly associated waiver requests or requests for special permission) prior to it being set for investigation (see also §1.1206(a)(4));

(4) A proceeding relating to prescription of common carrier depreciation rates under section 220(b) of the Communications Act prior to release of a public notice of specific proposed depreciation rates (see also §1.1206(a)(9));

(5) An informal complaint proceeding under 47 U.S.C. 208 and §1.717; and

(6) A complaint against a cable operator regarding its rates that is not filed on the standard complaint form required by §76.951 of this chapter (FCC Form 329).

[62 FR 15855, Apr. 3, 1997]

NON-RESTRICTED PROCEEDINGS

**§1.1206 Permit-but-disclose proceedings.**

(a) Unless otherwise provided by the Commission or the staff pursuant to §1.1200(a), until the proceeding is no longer subject to administrative reconsideration or review or to judicial review, *ex parte* presentations (other than *ex parte* presentations exempt under §1.1204(a)) to or from Commission decision-making personnel are permissible in the following proceedings, which are referred to as permit-but-disclose proceedings, provided that *ex parte* presentations to Commission decision-making personnel are disclosed pursuant to paragraph (b) of this section:

(1) An informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act other than a proceeding for the allotment of a broadcast channel, upon release of a Notice of Proposed Rulemaking (see also §1.1204(b)(2));

(2) A proceeding involving a rule change, policy statement or interpretive rule adopted without a Notice of Proposed Rule Making upon release of the order adopting the rule change, policy statement or interpretive rule;

(3) A declaratory ruling proceeding;

(4) A tariff proceeding which has been set for investigation under section 204 or 205 of the Communications Act (including directly associated waiver requests or requests for special permission) (see also §1.1204(b)(4));

(5) Unless designated for hearing, a proceeding under section 214(a) of the Communications Act that does not also involve applications under Title III of the Communications Act (see also §1.1208);

(6) Unless designated for hearing, a proceeding involving an application for a Cable Landing Act license that does not also involve applications under Title III of the Communications Act (see also §1.1208);

(7) A proceeding involving a request for information filed pursuant to the Freedom of Information Act;

NOTE 1 TO PARAGRAPH (A): Where the requested information is the subject of a request for confidentiality, the person filing the request for confidentiality shall be deemed a party.

(8) A proceeding before a Joint Board or a proceeding before the Commission involving a recommendation from a Joint Board;

(9) A proceeding conducted pursuant to section 220(b) of the Communications Act for prescription of common carrier depreciation rates upon release of a public notice of specific proposed depreciation rates (see also §1.1204(b)(4));

(10) A proceeding to prescribe a rate of return for common carriers under section 205 of the Communications Act; and

(11) A cable rate complaint proceeding pursuant to section 623(c) of the Communications Act where the complaint is filed on FCC Form 329.

NOTE 2 TO PARAGRAPH (A): In a permit-but-disclose proceeding involving only one ''party,'' as defined in §1.1202(d) of this subpart, the party and the Commission may freely make presentations to each other and need not comply with the disclosure requirements of paragraph (b) of this section.

(b) The following disclosure requirements apply to *ex parte* presentations in permit but disclose proceedings:

(1) *Written presentations.* A person who makes a written *ex parte* presentation subject to this section shall, no later than the next business day after the presentation, submit two copies of the presentation to the Commission's

secretary under separate cover for inclusion in the public record. The presentation (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that two copies have been submitted to the Secretary, and must be labeled as an *ex parte* presentation. If the presentation relates to more than one proceeding, two copies shall be filed for each proceeding.

(2) *Oral presentations.* A person who makes an oral *ex parte* presentation subject to this section that presents data or arguments not already reflected in that person's written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit to the Commission's Secretary, with copies to the Commissioners or Commission employees involved in the oral presentation, an original and one copy of a memorandum which summarizes the new data or arguments. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. The memorandum (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that an original and one copy have been submitted to the Secretary, and must be labeled as an *ex parte* presentation. If the presentation relates to more than one proceeding, two copies of the memorandum (or an original and one copy) shall be filed for each proceeding.

NOTE 1 TO PARAGRAPH (B): Where, for example, presentations occur in the form of discussion at a widely attended meeting, preparation of a memorandum as specified in the rule might be cumbersome. Under these circumstances, the rule may be satisfied by submitting a transcript or tape recording of the discussion as an alternative to a memorandum.

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, in permit-but-disclose proceedings presentations made by members of Congress or their staffs or by an agency or branch of the Federal Government or its staff shall be treated as *ex parte* presentations only if the presentations are of substantial significance and clearly intended to affect the ultimate decision. The Commission staff shall prepare a written summary of any such oral presentations and place them in the record in accordance with paragraph (b)(2) of this section and place any such written presentations in the record in accordance with paragraph (b)(1) of this section.

(4) *Notice of ex parte presentations.* The Commission's Secretary or, in the case of non-docketed proceedings, the relevant Bureau or Office shall place in the public file or record of the proceeding written *ex parte* presentations and memoranda reflecting oral *ex parte* presentations. The Secretary shall issue a public notice listing any written *ex parte* presentations or written summaries of oral *ex parte* presentations received by his or her office relating to any permit-but-disclose proceeding. Such public notices should generally be released at least twice per week.

NOTE 2 TO PARAGRAPH (B): Interested persons should be aware that some *ex parte* filings, for example, those not filed in accordance with the requirements of this paragraph (b), might not be placed on the referenced public notice. All *ex parte* presentations and memoranda filed under this section will be available for public inspection in the public file or record of the proceeding, and parties wishing to ensure awareness of all filings should review the public file or record.

NOTE 3 TO PARAGRAPH (B): As a matter of convenience, the Secretary may also list on the referenced public notices materials, even if not *ex parte* presentations, that are filed after the close of the reply comment period or, if the matter is on reconsideration, the reconsideration reply comment period.

[62 FR 15856, Apr. 3, 1997]

RESTRICTED PROCEEDINGS

### § 1.1208 Restricted proceedings.

Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a), *ex parte* presentations (other than *ex parte* presentations exempt under § 1.1204 (a)) are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) until the proceeding is no longer subject to administrative reconsideration or review or judicial review.

Proceedings in which *ex parte* presentations are prohibited, referred to as ''restricted'' proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings).

NOTE 1 TO §1.1208: In a restricted proceeding involving only one ''party,'' as defined in §1.1202(d), the party and the Commission may freely make presentations to each other because there is no other party to be served or with a right to have an opportunity to be present. See §1.1202(b). Therefore, to determine whether presentations are permissible in a restricted proceeding without service or notice and an opportunity for other parties to be present the definition of a ''party'' should be consulted.

*Examples:* After the filing of an uncontested application or waiver request, the applicant or other filer would be the sole party to the proceeding. The filer would have no other party to serve with or give notice of any presentations to the Commission, and such presentations would therefore not be ''ex parte presentations'' as defined by §1.1202(b) and would not be prohibited. On the other hand, in the example given, because the filer is a party, a third person who wished to make a presentation to the Commission concerning the application or waiver request would have to serve or notice the filer. Further, once the proceeding involved additional ''parties'' as defined by §1.1202(d) (e.g., an opponent of the filer who served the opposition on the filer), the filer and other parties would have to serve or notice all other parties.

NOTE 2 TO §1.1208: Consistent with §1.1200(a), the Commission or its staff may determine that a restricted proceeding not designated for hearing involves primarily issues of broadly applicable policy rather than the rights and responsibilities of specific parties and specify that the proceeding will be conducted in accordance with the provisions of §1.1206 governing permit-but-disclose proceedings.

[62 FR 15857, Apr. 3, 1997]

PROHIBITION ON SOLICITATION OF PRESENTATIONS

### §1.1210 Prohibition on solicitation of presentations.

No person shall solicit or encourage others to make any presentation which he or she is prohibited from making under the provisions of this subpart.

[62 FR 15857, Apr. 3, 1997]

PROCEDURES FOR HANDLING OF PROHIBITED EX PARTE PRESENTATIONS

### §1.1212 Procedures for handling of prohibited ex parte presentations.

(a) Commission personnel who believe that an oral presentation which is being made to them or is about to be made to them is prohibited shall promptly advise the person initiating the presentation that it is prohibited and shall terminate the discussion.

(b) Commission personnel who receive oral *ex parte* presentations which they believe are prohibited shall forward to the Office of General Counsel a statement containing the following information:

(1) The name of the proceeding;

(2) The name and address of the person making the presentation and that person's relationship (if any) to the parties to the proceeding;

(3) The date and time of the presentation, its duration, and the circumstances under which it was made;

(4) A full summary of the substance of the presentation;

(5) Whether the person making the presentation persisted in doing so after being advised that the presentation was prohibited; and

(6) The date and time that the statement was prepared.

(c) Commission personnel who receive written *ex parte* presentations which they believe are prohibited shall forward them to the Office of General Counsel. If the circumstances in which the presentation was made are not apparent from the presentation itself, a statement describing those circumstances shall be submitted to the Office of General Counsel with the presentation.

(d) Prohibited written *ex parte* presentations and all documentation relating to prohibited written and oral *ex parte* presentations shall be placed in a public file which shall be associated with but not made part of the record of the proceeding to which the presentations pertain. Such materials may be considered in determining the merits of a restricted proceeding only if they

are made part of the record and the parties are so informed.

(e) If the General Counsel determines that an *ex parte* presentation or presentation during the Sunshine period is prohibited by this subpart, he or she shall notify the parties to the proceeding that a prohibited presentation has occurred and shall serve on the parties copies of the presentation (if written) and any statements describing the circumstances of the presentation. Service by the General Counsel shall not be deemed to cure any violation of the rules against prohibited *ex parte* presentations.

(f) If the General Counsel determines that service on the parties would be unduly burdensome because the parties to the proceeding are numerous, he or she may issue a public notice in lieu of service. The public notice shall state that a prohibited presentation has been made and may also state that the presentation and related materials are available for public inspection.

(g) The General Counsel shall forward a copy of any statement describing the circumstances in which the prohibited *ex parte* presentation was made to the person who made the presentation. Within ten days thereafter, the person who made the presentation may file with the General Counsel a sworn declaration regarding the presentation and the circumstances in which it was made. The General Counsel may serve copies of the sworn declaration on the parties to the proceeding.

(h) Where a restricted proceeding precipitates a substantial amount of correspondence from the general public, the procedures in paragraphs (c) through (g) of this section will not be followed with respect to such correspondence. The correspondence will be placed in a public file and be made available for public inspection.

[62 FR 15857, Apr. 3, 1997]

### § 1.1214 Disclosure of information concerning violations of this subpart.

Any party to a proceeding or any Commission employee who has substantial reason to believe that any violation of this subpart has been solicited, attempted, or committed shall promptly advise the Office of General Counsel in writing of all the facts and circumstances which are known to him or her.

[62 FR 15858, Apr. 3, 1997]

SANCTIONS

### § 1.1216 Sanctions.

(a) *Parties.* Upon notice and hearing, any party to a proceeding who directly or indirectly violates or causes the violation of any provision of this subpart, or who fails to report the facts and circumstances concerning any such violation as required by this subpart, may be disqualified from further participation in that proceeding. In proceedings other than a rulemaking, a party who has violated or caused the violation of any provision of this subpart may be required to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected. In any proceeding, such alternative or additional sanctions as may be appropriate may also be imposed.

(b) *Commission personnel.* Commission personnel who violate provisions of this subpart may be subject to appropriate disciplinary or other remedial action as provided in part 19 of this chapter.

(c) *Other persons.* Such sanctions as may be appropriate under the circumstances shall be imposed upon other persons who violate the provisions of this subpart.

[62 FR 15858, Apr. 3, 1997]

## Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

SOURCE: 51 FR 15000, Apr. 22, 1986, unless otherwise noted.

### § 1.1301 Basis and purpose.

The provisions of this subpart implement Subchapter I of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4335.

### § 1.1302 Cross-reference; Regulations of the Council on Environmental Quality.

A further explanation regarding implementation of the National Environmental Policy Act is provided by the

regulations issued by the Council on Environmental Quality, 40 CFR 1500–1508.28.

### §1.1303 Scope.

The provisions of this subpart shall apply to all Commission actions that may or will have a significant impact on the quality of the human environment. To the extent that other provisions of the Commission's rules and regulations are inconsistent with the subpart, the provisions of this subpart shall govern.

[55 FR 20396, May 16, 1990]

### §1.1304 Information and assistance.

For general information and assistance concerning the provisions of this subpart, the Office of General Counsel may be contacted, (202) 632–6990. For more specific information, the Bureau responsible for processing a specific application should be contacted.

### §1.1305 Actions which normally will have a significant impact upon the environment, for which Environmental Impact Statements must be prepared.

Any Commission action deemed to have a significant effect upon the quality of the human environment requires the preparation of a Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) (collectively referred to as EISs) (*see* §§1.1314, 1.1315 and 1.1317). The Commission has reviewed representative actions and has found no common pattern which would enable it to specify actions that will thus automatically require EISs.

NOTE: Our current application forms refer applicants to §1.1305 to determine if their proposals are such that the submission of environmental information is required (*see* §1.1311). Until the application forms are revised to reflect our new environmental rules, applicants should refer to §1.1307. Section 1.1307 now delineates those actions for which applicants must submit environmental information.

### §1.1306 Actions which are categorically excluded from environmental processing.

(a) Except as provided in §1.1307 (c) and (d), Commission actions not covered by §1.1307 (a) and (b) are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing.

(b) Specifically, any Commission action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, provided such proposals do not:

(1) Involve a site location specified under §1.1307(a) (1)–(7), or

(2) Involve high intensity lighting under §1.1307(a)(8).

(3) Result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §1.1307(b).

NOTE 1: The provisions of §1.1307(a) of this part requiring the preparation of EAs do not encompass the mounting of antenna(s) on an existing building or antenna tower unless §1.1307(a)(4) of this part is applicable. Such antennas are subject to §1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in §1.1307(b) of this part. The provisions of §1.1307 (a) and (b) of this part do not encompass the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the applicant or others. The use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged.

NOTE 2: The specific height of an antenna tower or supporting structure, as well as the specific diameter of a satellite earth station, in and of itself, will not be deemed sufficient to warrant environmental processing, *see* §§1.1307 and 1.1308.

NOTE 3: The construction of an antenna tower or supporting structure in an established "antenna farm": (i.e., an area in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm), will be categorically excluded unless *one or more of the antennas to be mounted on the tower or structure are subject to the provisions of §1.1307(b) and the additional radiofrequency radiation from the antenna(s) on the new tower or structure* would cause human exposure in excess of the applicable health and safety *guidelines* cited in §1.1307(b).

[51 FR 15000, Apr. 22, 1986, as amended at 51 FR 18889, May 23, 1986; 53 FR 28393, July 28, 1988; 56 FR 13414, Apr. 2, 1991]

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

(a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§ 1.1308 and 1.1311) and may require further Commission environmental processing (*see* §§ 1.1314, 1.1315 and 1.1317):

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

NOTE: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places. (*See* 16 U.S.C. 470w(5); 36 CFR 60 and 800.)

NOTE: The National Register is updated and re-published in the FEDERAL REGISTER each year in February. To ascertain whether a proposal affects a historical property of national significance, inquiries also may be made to the appropriate State Historic Preservation Officer, *see* 16 U.S.C. 470a(b); 36 CFR parts 63 and 800.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in a flood Plain (*See* Executive Order 11988.)

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§ 1.1310 and 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities must contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) The appropriate exposure limits in §§ 1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 or § 2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of table 1, *building-mounted antennas* means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term *power*

in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase *total power of all channels* in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

| Service (title 47 CFR rule part) | Evaluation required if |
|---|---|
| Experimental Radio Services (part 5) | Power > 100 W ERP (164 W EIRP) |
| Multipoint Distribution Service (subpart K of part 21). | *Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1640 W EIRP<br>*Building-mounted antennas:* power > 1640 W EIRP |
| Paging and Radiotelephone Service (subpart E of part 22). | *Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1000 W ERP (1640 W EIRP)<br>*Building-mounted antennas:* power > 1000 W ERP (1640 W EIRP) |
| Cellular Radiotelephone Service (subpart H of part 22). | *Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 1000 W ERP (1640 W EIRP)<br>*Building-mounted antennas:* total power of all channels > 1000 W ERP (1640 W EIRP) |
| Personal Communications Services (part 24) | (1) Narrowband PCS (subpart D): *non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 1000 W ERP (1640 W EIRP)<br>*Building-mounted antennas:* total power of all channels > 1000 W ERP (1640 W EIRP)<br>(2) Broadband PCS (subpart E): *non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 2000 W ERP (3280 W EIRP)<br>*Building-mounted antennas:* total power of all channels > 2000 W ERP (3280 W EIRP) |
| Satellite Communications (part 25) | All included. |
| General Wireless Communications Service (part 26). | Total power of all channels > 1640 W EIRP |
| Wireless Communications Service (part 27) | Total power of all channels > 1640 W EIRP |
| Radio Broadcast Services (part 73) | All included |
| Experimental, auxiliary, and special broadcast and other program distributional services (part 74). | Subparts A, G, L: power > 100 W ERP<br>Subpart I: *non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1640 W EIRP<br>*Building-mounted antennas:* power > 1640 W EIRP |
| Stations in the Maritime Services (part 80) | Ship earth stations only |
| Private Land Mobile Radio Services Paging Operations (part 90). | *Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1000 W ERP (1640 W EIRP)<br>*Building-mounted antennas:* power > 1000 W ERP (1640 W EIRP) |
| Private Land Mobile Radio Services Specialized Mobile Radio (part 90). | *Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 1000 W ERP (1640 W EIRP)<br>*Building-mounted antennas:*<br>Total power of all channels > 1000 W ERP (1640 W EIRP) |
| Amateur Radio Service (part 97) | Transmitter output power > levels specified in § 97.13(c)(1) of this chapter |

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

| Service (title 47 CFR rule part) | Evaluation required if |
|---|---|
| Local Multipoint Distribution Service (subpart L of part 101). | *Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1640 W EIRP<br>*Building-mounted antennas:* power > 1640 W EIRP<br>LMDS licensees are required to attach a label to subscriber transceiver antennas that:<br>(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and<br>(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310 of this chapter |

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services (ship earth stations only) and the Specialized Mobile Radio Service authorized under subpart H of parts 22, 24, 25, 26, 27, 80, and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), and 15.319(i) and 15.407(f) of this chapter. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091 and 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter or field strength levels that, when squared, exceed 5% of the square of the electric or magnetic field strength limit applicable to their particular transmitter. Owners of transmitter sites are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in § 1.1307(b) and, where feasible, should encourage co-location of transmitters and common solutions for controlling access to areas where the RF exposure limits contained in § 1.1310 might be exceeded.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in § 1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in § 1.1310 must submit an EA if emissions from the applicant's transmitter or facility results, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter of facility.

(4) *Transition Provisions.* For applications filed with the Commission prior to October 15, 1997, (or January 1, 1998,

for the Amateur Radio Service only), Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations, or modifications in existing facilities require the preparation of an Environmental Assessment if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation that are in excess of the requirements contained in paragraphs (b)(4)(i) through (b)(4)(iii) of this section. These transition provisions do not apply to applications for equipment authorization or use of mobile, portable and unlicensed devices specified in paragraph (b)(2) of this section.

(i) For facilities and operations licensed or authorized under parts 5, 21 (subpart K), 25, 73, 74 (subparts A, G, I, and L), and 80 of this chapter, the ''Radio Frequency Protection Guides'' recommended in ''American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz'', (ANSI C95.1–1982), issued by the American National Standards Institute (ANSI) and copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York shall apply. With respect to subpart K of part 21 and subpart I of part 74 of this chapter, these requirements apply only to multipoint distribution service and instructional television fixed service stations transmitting with an equivalent isotropically radiated power (EIRP) in excess of 200 watts. With respect to subpart L of part 74 of this chapter, these requirements apply only to FM booster and translator stations transmitting with an effective radiated power (ERP) in excess of 100 watts. With respect to part 80 of this chapter, these requirements apply only to ship earth stations.

(ii) For facilities and operations licensed or authorized under part 24 of this chapter, licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1–1991 (ANSI/IEEE C95.1–1992), ''Safety Levels With Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz.'' Measurement methods are specified in IEEE C95.3–1991, ''Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave.'' Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331. Telephone: 1–800–678–4333. The limits for both ''controlled'' and ''uncontrolled'' environments, as defined by IEEE C95.1–1991, will apply to all PCS base and mobile stations, as appropriate.

(iii) Applications for all other types of facilities and operations are categorically excluded from routine RF radiation evaluation except as provided in paragraphs (c) and (d) of this section.

(5) *Existing transmitting facilities, devices and operations:* All existing transmitting facilities, operations and devices regulated by the Commission must be in compliance with the requirements of paragraphs (b)(1) through (b)(3) of this section by September 1, 2000, or, if not in compliance, file an Environmental Assessment as specified in § 1.1311.

(c) If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. (*See* § 1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (*see* §§ 1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

(d) If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

(e) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

[51 FR 15000, Apr. 22, 1986, as amended at 52 FR 13241, Apr. 22, 1987; 53 FR 28224, July 27, 1988; 53 FR 28393, July 28, 1988; 54 FR 30548, July 21, 1989; 55 FR 2381, Jan. 24, 1990; 55 FR 50692, Dec. 10, 1990; 61 FR 41014, Aug. 7, 1996; 62 FR 3240, Jan. 22, 1997; 62 FR 4655, Jan. 31, 1997; 62 FR 9654, Mar. 3, 1997; 62 FR 23162, Apr. 29, 1997; 62 FR 47965, Sept. 12, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47965, Sept. 12, 1997, § 1.1307 was amended by revising paragraphs (b)(1), (2), (3), and (4) introductory text, and adding (b)(5), effective Oct. 15, 1997. For the convenience of the user, the superseded text is set forth as follows:

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

* * * * *

(b) * * *

(1) The exposure limits in § 1.1310 are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in Table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of Table 1, ''rooftop'' means the roof or otherwise outside, topmost level or levels of a building structure that is occupied as a workplace or residence and where either workers or the general public may have access. The term ''power'' in column 2 of Table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter; the Wireless Communications Service, part 27 of this chapter; and covered Specialized Mobile Radio Service operations, part 90 of this chapter; the phrase ''total power of all channels'' in column 2 of Table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters of the facility. When applying the criteria of Table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

| Service (Title 47 CFR Rule Part) | Evaluation required if: |
|---|---|
| Experimental Radio Services (part 5) | Power > 100W ERP (164W EIRP). |
| Radio Frequency Devices (part 15) | Millimeter wave devices operating in one of the following bands 46.7–46.8 GHz, 59.0–64.0 GHz or 76.0–77.0 GHz (see §§ 15.253 and 15.255 of this chapter). |
| | Unlicensed personal communications service devices operating under subpart D of this chapter. |

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

| Service (Title 47 CFR Rule Part) | Evaluation required if: |
|---|---|
| Multipoint Distribution Service (subpart K of part 21) | *Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* power > 1640 W EIRP.<br>*Rooftop antennas:* Power > 1640W EIRP. |
| Paging and Radiotelephone Service (subpart E of part 22). | *Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* power > 1000W ERP (1640 W EIRP).<br>*Rooftop antennas:* power > 1000W ERP (1640W EIRP). |
| Cellular Radiotelephone Service (subpart H of part 22). | *Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* total power of all channels > 1000W ERP (1640 W EIRP).<br>*Rooftop antennas:* total power of all channels > 1000W ERP (1640W EIRP). |
| Personal Communications Services (part 24) | (1) Narrowband PCS (subpart D): *non-rooftop antennas:* height above ground level to radiation center <10 m *and* total power of all channels > 1000W ERP (1640 W EIRP).<br>*Rooftop antennas:* total power of all channels > 1000W (1640W EIRP).<br>(2) Broadband PCS (subpart E): *non-rooftop antennas:* height above ground level to radiation center <10 m *and* total power of all channels > 2000W ERP (3280 W EIRP).<br>*Rooftop antennas:* total power of all channels > 2000W (3280W EIRP). |
| Satellite Communications (part 25) | All included. |
| Wireless Communications Service (part 27) | Total power of all channels > 1000 W ERP (1640 W EIRP) |
| Radio Broadcast Services (part 73) | All included. |
| Experimental, auxiliary, and special broadcast and other program distributional services (part 74). | Subparts A, G, L: power > 100W ERP.<br>Subpart I: *non-rooftop antennas:* height above ground level to radiation center < 10 m *and* power > 1640 W EIRP.<br>*Rooftop antennas:* power > 1640W EIRP. |
| Stations in the Maritime Services (part 80) | Ship earth stations only. |
| Private Land Mobile Radio Services Paging Operations (part 90). | *Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* power > 1000W ERP (1640 W EIRP).<br>*Rooftop antennas:* power > 1000W ERP (1640W EIRP). |
| Private Land Mobile Radio Services Specialized Mobile Radio (''covered'' providers only—see below)[1] (part 90). | *Non-rooftop antennas:* height above ground level to radiation center < 10 m *and* total power of all channels > 1000W ERP (1640 W EIRP).<br>*Rooftop antennas:* total power of all channels > 1000W ERP (1640W EIRP). |
| Amateur Radio Service (part 97) | Transmitter power > 50W PEP. |
| Local Multipoint Distribution Service (subpart L of part 101). | *Non-rooftop antennas*: Height above ground level to radiation center <10 m and power >1640 W EIRP.<br>*Rooftop antennas:* Power > 1640 W EIRP.<br>LMDS licensees are required to attach a label to subscriber transceiver antennas that (1) provides adequate notice regarding potential radio frequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC radio frequency emission guidelines contained in FCC OST Bulletin 65, 2d Edition. |

[1] NOTE: ''Covered'' SMR providers includes geographic area SMR licensees in the 800 MHz and 900 MHz bands that offer real-time, two-way switched voice service that is interconnected with the public switched network and Incumbent Wide Area SMR licensees, as defined in § 20.3 of this chapter.

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the Wireless Communications Service, the Maritime Services (ship earth stations only), and covered Specialized Mobile Radio Service providers authorized under subpart H of part 22, part 24, part 25, part 27, part 80, and part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. All unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), 15.319(i), and 15.407(f) of this chapter. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091 and 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance with the guidelines are the shared responsibility of all licensees whose transmitters produce field strengths or power density levels at the area in question in excess of 1% of the exposure

limits applicable to their particular transmitter.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in § 1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result in a field strength or power density at the area in question that exceeds 1% of the exposure limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in § 1.1310 must submit an EA if emissions from the applicant's transmitter or facility results in a field strength or power density at the area in question that exceeds 1% of the exposure limit applicable to that transmitter or facility.

(4) *Transition Provisions.* For applications filed with the Commission prior to September 1, 1997 (January 1, 1998 for the Amateur Radio Service only), Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations, or modifications in existing facilities require the preparation of an Environmental Assessment if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation that are in excess of the requirements contained in paragraphs (b) (4)(i) through (4)(iii) of this section. These transition provisions do not apply to applications for equipment authorization or use of mobile, portable, and unlicensed devices specified in paragraph (b)(2) of this section.

* * * * *

### § 1.1308 Consideration of environmental assessments (EAs); findings of no significant impact.

(a) Applicants shall prepare EAs for actions that may have a significant environmental impact (*see* § 1.1307). An EA is described in detail in § 1.1311 of this part of the Commission rules.

(b) The EA is a document which shall explain the environmental consequences of the proposal and set forth sufficient analysis for the Bureau or the Commission to reach a determination that the proposal will or will not have a significant environmental effect. To assist in making that determination, the Bureau or the Commission may request further information from the applicant, interested persons, and agencies and authorities which have jurisdiction by law or which have relevant expertise.

NOTE: With respect to actions specified under § 1.1307 (a)(3) and (a)(4), the Commission shall solicit and consider the comments of the Department of Interior, and the State Historic Preservation Officer and the Advisory Council on Historic Preservation, respectively, in accordance with their established procedures. *See* Interagency Cooperation—Endangered Species Act of 1973, as amended, 50 CFR part 402; Protection of Historic and Cultural Properties, 36 CFR part 800. In addition, when an action interferes with or adversely affects an American Indian tribe's religious site, the Commission shall solicit the views of that American Indian tribe. *See* § 1.1307(a)(5).

(c) If the Bureau or the Commission determines, based on an independent review of the EA and any applicable mandatory consultation requirements imposed upon federal agencies (*see* note above), that the proposal will have a significant environmental impact upon the quality of the human environment, it will so inform the applicant. The applicant will then have an opportunity to amend its application so as to reduce, minimize, or eliminate environmental problems. *See* § 1.1309. If the environmental problem is not eliminated, the Bureau will publish in the FEDERAL REGISTER a Notice of Intent (*see* § 1.1314) that EISs will be prepared (*see* §§ 1.1315 and 1.1317), or

(d) If the Bureau or Commission determines, based on an independent review of the EA, and any mandatory consultation requirements imposed upon federal agencies (*see* the note to paragraph (b) of this section), that the proposal would not have a significant impact, it will make a finding of no significant impact. Thereafter, the application will be processed without further documentation of environmental effect. Pursuant to CEQ regulations, *see* 40 CFR 1501.4 and 1501.6, the applicant must provide the community notice of the Commission's finding of no significant impact.

[51 FR 15000, Apr. 22, 1986; 51 FR 18889, May 23, 1986, as amended at 53 FR 28394, July 28, 1988]

### § 1.1309 Application amendments.

Applicants are permitted to amend their applications to reduce, minimize or eliminate potential environmental

problems. As a routine matter, an applicant will be permitted to amend its application within thirty (30) days after the Commission or the Bureau informs the applicant that the proposal will have a significant impact upon the quality of the human environment (*see* § 1.1308(c)). The period of thirty (30) days may be extended upon a showing of good cause.

### § 1.1310 Radiofrequency radiation exposure limits.

The criteria listed in table 1 shall be used to evaluate the environmental impact of human exposure to radiofrequency (RF) radiation as specified in § 1.1307(b), except in the case of portable devices which shall be evaluated according to the provisions of § 2.1093 of this chapter. Further information on evaluating compliance with these limits can be found in the FCC's OST/OET Bulletin Number 65, ''Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation.''

NOTE TO INTRODUCTORY PARAGRAPH: These limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (NCRP) in ''Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,'' NCRP Report No. 86, Sections 17.4.1, 17.4.1.1, 17.4.2 and 17.4.3. Copyright NCRP, 1986, Bethesda, Maryland 20814. In the frequency range from 100 MHz to 1500 MHz, exposure limits for field strength and power density are also generally based on guidelines recommended by the American National Standards Institute (ANSI) in Section 4.1 of ''IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,'' ANSI/IEEE C95.1–1992, Copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017.

TABLE 1—LIMITS FOR MAXIMUM PERMISSIBLE EXPOSURE (MPE)

| Frequency range (MHz) | Electric field strength (V/m) | Magnetic field strength (A/m) | Power density (mW/cm$^2$) | Averaging time (minutes) |
|---|---|---|---|---|
| **(A) Limits for Occupational/Controlled Exposures** | | | | |
| 0.3–3.0 | 614 | 1.63 | *(100) | 6 |
| 3.0–30 | 1842/f | 4.89/f | *(900/f$^2$) | 6 |
| 30–300 | 61.4 | 0.163 | 1.0 | 6 |
| 300–1500 | | | f/300 | 6 |
| 1500–100,000 | | | 5 | 6 |
| **(B) Limits for General Population/Uncontrolled Exposure** | | | | |
| 0.3–1.34 | 614 | 1.63 | *(100) | 30 |
| 1.34–30 | 824/f | 2.19/f | *(180/f$^2$) | 30 |
| 30–300 | 27.5 | 0.073 | 0.2 | 30 |
| 300–1500 | | | f/1500 | 30 |
| 1500–100,000 | | | 1.0 | 30 |

f = frequency in MHz
* = Plane-wave equivalent power density

NOTE 1 TO TABLE 1: Occupational/controlled limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. Limits for occupational/controlled exposure also apply in situations when an individual is transient through a location where occupational/controlled limits apply provided he or she is made aware of the potential for exposure.

NOTE 2 TO TABLE 1: General population/uncontrolled exposures apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or can not exercise control over their exposure.

[61 FR 41016, Aug. 7, 1996]

### § 1.1311 Environmental information to be included in the environmental assessment (EA).

(a) The applicant shall submit an EA with each application that is subject to environmental processing (*see* § 1.1307). The EA shall contain the following information:

(1) For antenna towers and satellite earth stations, a description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.

(2) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.

(3) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.

(4) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects, and any alternative sites or facilities which have been or might reasonably be considered.

(5) Any other information that may be requested by the Bureau or Commission.

(6) If endangered or threatened species or their critical habitats may be affected, the applicant's analysis must utilize the best scientific and commercial data available, *see* 50 CFR 402.14(c).

(b) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission or Bureau, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness areas, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed, or eligible for listing, in the National Register of Historic Places. It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).

(c) The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.

(d) To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

(e) An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility for determining whether of the facilities in question will have a significant effect on the quality of the human environment and, if it will, for invoking the environmental impact statement process.

[51 FR 15000, Apr. 22, 1986, as amended at 51 FR 18889, May 23, 1986; 53 FR 28394, July 28, 1988]

### § 1.1312 Facilities for which no preconstruction authorization is required.

(a) In the case of facilities for which no Commission authorization prior to construction is required by the Commission's rules and regulations the licensee or applicant shall initially ascertain whether the proposed facility may have a significant environmental impact as defined in § 1.1307 of this part or is categorically excluded from environmental processing under § 1.1306 of this part.

(b) If a facility covered by paragraph (a) of this section may have a significant environmental impact, the information required by § 1.1311 of this part shall be submitted by the licensee or applicant and ruled on by the Commission, and environmental processing (if invoked) shall be completed, see § 1.1308 of this part, prior to the initiation of construction of the facility.

(c) If a facility covered by paragraph (a) of this section is categorically excluded from environmental processing, the licensee or applicant may proceed with construction and operation of the facility in accordance with the applicable licensing rules and procedures.

(d) If, following the initiation of construction under this section, the licensee or applicant discovers that the proposed facility may have a significant environmental effect, it shall immediately cease construction which may have that effect, and submit the information required by §1.1311 of this part. The Commission shall rule on that submission and complete further environmental processing (if invoked), see §1.1308 of this part, before such construction is resumed.

(e) Paragraphs (a) through (d) of this section shall not apply to the construction of mobile stations.

[55 FR 20396, May 16, 1990, as amended at 56 FR 13414, Apr. 2, 1991]

### §1.1313 Objections.

(a) In the case of an application to which section 309(b) of the Communications Act applies, objections based on environmental considerations shall be filed as petitions to deny.

(b) Informal objections which are based on environmental considerations must be filed prior to grant of the construction permit, or prior to authorization for facilities that do not require construction permits, or pursuant to the applicable rules governing services subject to lotteries.

### §1.1314 Environmental impact statements (EISs).

(a) Draft Environmental Impact Statements (DEISs) (§1.1315) and Final Environmental Impact Statements (FEISs) (referred to collectively as EISs) (§1.1317) shall be prepared by the Bureau responsible for processing the proposal when the Commission's or the Bureau's analysis of the EA (§1.1308) indicates that the proposal will have a significant effect upon the environment and the matter has not been resolved by an amendment.

(b) As soon as practically feasible, the Bureau will publish in the FEDERAL REGISTER a Notice of Intent to prepare EISs. The Notice shall briefly identify the proposal, concisely describe the environmental issues and concerns presented by the subject application, and generally invite participation from affected or involved agencies, authorities and other interested persons.

(c) The EISs shall not address nonenvironmental considerations. To safeguard against repetitive and unnecessarily lengthy documents, the Statements, where feasible, shall incorporate by reference material set forth in previous documents, with only a brief summary of its content. In preparing the EISs, the Bureau will identify and address the significant environmental issues and eliminate the insignificant issues from analysis.

(d) To assist in the preparation of the EISs, the Bureau may request further information from the applicant, interested persons and agencies and authorities, which have jurisdiction by law or which have relevant expertise. The Bureau may direct that technical studies be made by the applicant and that the applicant obtain expert opinion concerning the potential environmental problems and costs associated with the proposed action, as well as comparative analyses of alternatives. The Bureau may also consult experts in an effort to identify measures that could be taken to minimize the adverse effects and alternatives to the proposed facilities that are not, or are less, objectionable. The Bureau may also direct that objections be raised with appropriate local, state or federal land use agencies or authorities (if their views have not been previously sought).

(e) The Bureau responsible for processing the particular application and, thus, preparing the EISs shall draft supplements to Statements where significant new circumstances occur or information arises relevant to environmental concerns and bearing upon the application.

(f) The Application, the EA, the DEIS, and the FEIS and all related documents, including the comments filed by the public and any agency, shall be part of the administrative record and will be routinely available for public inspection.

(g) If EISs are to be prepared, the applicant must provide the community with notice of the availability of environmental documents and the scheduling of any Commission hearings in that action.

(h) The timing of agency action with respect to applications subject to EISs

is set forth in 40 CFR 1506.10. No decision shall be made until ninety (90) days after the Notice of Availability of the Draft Environmental Impact Statement is published in the Federal Register, and thirty (30) days after the Notice of Availability of the Final Environmental Impact Statement is published in the FEDERAL REGISTER, which time period may run concurrently, *See* 40 CFR 1506.10(c); *see also* §§ 1.1315(b) and 1.1317(b).

(i) Guidance concerning preparation of the Draft and Final Environmental Statements is set out in 40 CFR part 1502.

[51 FR 15000, Apr. 22, 1986, as amended at 53 FR 28394, July 28, 1988]

### § 1.1315 The Draft Environmental Impact Statement (DEIS); Comments.

(a) The DEIS shall include:

(1) A concise description of the proposal, the nature of the area affected, its uses, and any specific feature of the area that has special environmental significance;

(2) An analysis of the proposal, and reasonable alternatives exploring the important consequent advantages and/or disadvantages of the action and indicating the direct and indirect effects and their significance in terms of the short and long-term uses of the human environment.

(b) When a DEIS and supplements, if any, are prepared, the Commission shall send five copies of the Statement, or a summary, to the Office of Federal Activities, Environmental Protection Agency. Additional copies, or summaries, will be sent to the appropriate regional office of the Environmental Protection Agency. Public Notice of the availability of the DEIS will be published in the FEDERAL REGISTER by the Environmental Protection Agency.

(c) When copies or summaries of the DEIS are sent to the Environmental Protection Agency, the copies or summaries will be mailed with a request for comment to federal agencies having jurisdiction by law or special expertise, to the Council on Environmental Quality, to the applicant, to individuals, groups and state and local agencies known to have an interest in the environmental consequences of a grant, and to any other person who has requested a copy.

(d) Any person or agency may comment on the DEIS and the environmental effect of the proposal described therein within 45 days after notice of the availability of the statement is published in the FEDERAL REGISTER. A copy of those comments shall be mailed to the applicant by the person who files them pursuant to 47 CFR 1.47. An original and one copy shall be filed with the Commission. If a person submitting comments is especially qualified in any way to comment on the environmental impact of the facilities, a statement of his or her qualifications shall be set out in the comments. In addition, comments submitted by an agency shall identify the person(s) who prepared them.

(e) The applicant may file reply comments within 15 days after the time for filing comments has expired. Reply comments shall be filed with the Commission in the same manner as comments, and shall be served by the applicant on persons or agencies which filed comments.

(f) The preparation of a DEIS and the request for comments shall not open the application to attack on other grounds.

### § 1.1317 The Final Environmental Impact Statement (FEIS).

(a) After receipt of comments and reply comments, the Bureau will prepare a FEIS, which shall include a summary of the comments, and a response to the comments, and an analysis of the proposal in terms of its environmental consequences, and any reasonable alternatives, and recommendations, if any, and shall cite the Commission's internal appeal procedures (*See* 47 CFR 1.101–1.120).

(b) The FEIS and any supplements will be distributed and published in the same manner as specified in § 1.1315. Copies of the comments and reply comments, or summaries thereof where the record is voluminous, shall be attached to the FEIS.

### § 1.1319 Consideration of the environmental impact statements.

(a) If the action is subject to a hearing:

(1) In rendering his initial decision, the Administrative Law Judge shall utilize the FEIS in considering the environmental issues, together with all other non-environmental issues. In a comparative context, the respective parties shall be afforded the opportunity to comment on the FEIS, and the Administrative Law Judge's decision shall contain an evaluation of the respective applications based on environmental and non-environmental public interest factors.

(2) Upon review of an initial decision, the Commission will consider and assess all aspects of the FEIS and will render its decision, giving due consideration to the environmental and non-environmental issues.

(b) In all non-hearing matters, the Commission, as part of its decision-making process, will review the FEIS, along with other relevant issues, to ensure that the environmental effects are specifically assessed and given comprehensive consideration.

[51 FR 15000, Apr. 22, 1986, as amended at 62 FR 4171, Jan. 29, 1997]

## Subpart J—Pole Attachment Complaint Procedures

SOURCE: 43 FR 36094, Aug. 15, 1978, unless otherwise noted.

### §1.1401 Purpose.

The rules and regulations contained in subpart J of this part provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms, and conditions that are just and reasonable.

[61 FR 45618, Aug. 29, 1996]

### §1.1402 Definitions.

(a) The term *utility* means any person that is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person that is cooperatively organized, or any person owned by the Federal Government or any State.

(b) The term *pole attachment* means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(c) The term *usable space* means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(d) The term *complaint* means a filing by a cable television system operator, a cable television system association, a utility, an association of utilities, a telecommunications carrier, or an association of telecommunications carriers alleging that it has been denied access to a utility pole, duct, conduit, or right-of-way in violation of this subpart and/or that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term *complainant* means a cable television system operator, a cable television system association, a utility, an association of utilities, a telecommunications carrier, or an association of telecommunications carriers who files a complaint.

(f) The term *respondent* means a cable television system operator, a utility, or a telecommunications carrier against whom a complaint is filed.

(g) The term *State* means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(h) For purposes of this subpart, the term *telecommunications carrier* means any provider of telecommunications services, except that the term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226) or incumbent local exchange carriers (as defined in 47 U.S.C. 251(h)).

[43 FR 36094, Aug. 15, 1978, as amended at 52 FR 31770, Aug. 24, 1987; 61 FR 43024, Aug. 20, 1996; 61 FR 45618, Aug. 29, 1996]

**§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay.**

(a) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding this obligation, a utility may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.

(b) Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

(c) A utility shall provide a cable television system operator or telecommunications carrier no less than 60 days written notice prior to:

(1) Removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of the cable television system operator's of telecommunications carrier's pole attachment agreement;

(2) Any increase in pole attachment rates; or

(3) Any modification of facilities other than routine maintenance or modification in response to emergencies.

(d) A cable television system operator or telecommunications carrier may file a ''Petition for Temporary Stay'' of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunication service, a copy of the notice, and certification of service as required by § 1.1404(b). The named respondent may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to § 1.46.5.

[61 FR 45618, Aug. 29, 1996]

**§ 1.1404 Complaint.**

(a) The complaint shall contain the name and address of the complainant, name and address of the respondent, and shall contain a verification (in the form in § 1.721(b)), signed by the complainant or officer thereof if complainant is a corporation, showing complainant's direct interest in the matter complained of. Counsel for the complainant may sign the complaint. Complainants may join together to file a joint complaint. Complaints filed by associations shall specifically identify each utility, cable television system operator, or telecommunications carrier who is a party to the complaint and shall be accompanied by a document from each identified member certifying that the complaint is being filed on its behalf.

(b) The complaint shall be accompanied by a certification of service on the named respondent, and each of the Federal, State, and local governmental agencies that regulate any aspect of the services provided by the complainant or respondent.

(c) In a case where it is claimed that a rate, term, or condition is unjust or unreasonable, the complaint shall contain a statement that the State has not certified to the Commission that it regulates the rates, terms and conditions for pole attachments. The complaint shall include a statement that the utility is not owned by any railroad, any person who is cooperatively organized or any person owned by the Federal Government or any State.

(d) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the

cable system operator or telecommunications carrier and the utility. If there is no present pole attachment agreement, the complaint shall contain:

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television system operator or telecommunications carrier currently has attachments on the poles, ducts, conduits, or rights-of-way.

(e) The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust or unreasonable.

(f) In any case, where it is claimed that a term or condition is unjust or unreasonable, the claim shall specify all information and argument relied upon to justify said claim.

(g) In a case where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim. The data and information shall include, where applicable:

(1) The gross investment by the utility for pole lines;

(2) The investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(3) The depreciation reserve from the gross pole line investment;

(4) The depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(5) The total number of poles: (i) Owned; and (ii) controlled or used by the utility.

If any of these poles are jointly owned, the complaint shall specify the number of such jointly owned poles and the percentage of each joint pole or the number of equivalent poles owned by the subject utility;

(6) The total number of poles which are the subject of the complaint;

(7) The number of poles included in paragraph (g)(6) of this section that are controlled or used by the utility through lease between the utility and other owner(s), and the annual amounts paid by the utility for such rental;

(8) The number of poles included in paragraph (g)(6) of this section that are owned by the utility and that are leased to other users by the utility, and the annual amounts paid to the utility for such rental;

(9) The annual carrying charges attributable to the cost of owning a pole. These charges may be expressed as a percentage of the net pole investment. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(10) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court;

(11) The average amount of usable space per pole for those poles used for pole attachments (13.5 feet may be in lieu of actual measurement, but may be rebutted);

(12) Reimbursements received from CATV operators for non-recurring costs; and

Data and information should be based upon historical or original cost methodology, insofar as possible. Data should be derived from Form M, FERC 1, or other reports filed with state or Federal regulatory agencies (identify source). Calculations made in connection with these figures should be provided to the complainant. Where the attachments involve ducts, conduits, or rights of way, in whole or in part, appropriate and equivalent data and information should be filed. The complainant shall also specify any other information and argument relied upon

to attempt to establish that a rate, term, or condition is not just and reasonable.

(h) If any of the information required in paragraph (g) of this section is not provided to the cable television operator by the utility upon reasonable request, the cable television operator shall include a statement indicating the steps taken to obtain information from the utility, including the dates of all requests. No complaint filed by a cable television operator shall be dismissed where the utility has failed to provide the information in paragraph (g) of this section after such reasonable request. A utility should supply a cable television system operator the information required in paragraph (g) of this section, along with the supporting pages from its FERC Form 1, FCC Form M, or other report to a regulatory body, within 30 days of the request by the cable operator. (The cable operator, in turn, shall submit these pages with its complaint). If the utility did not supply these pages to the cable operator in response to the information request, it shall supply this information in its response to the complaint.

(i) The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing. If no such steps were taken, the complaint shall state the reason(s) why it believed such steps were fruitless.

(j) Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(k) In a case where a cable television system operator or telecommunications carrier claims that it has been denied access to a pole, duct, conduit or right-of-way despite a request made pursuant to section 47 U.S.C. § 224(f), the complaint shall be filed within 30 days of such denial. In addition to meeting the other requirements of this section, the complaint shall include the data and information necessary to support the claim, including:

(1) The reasons given for the denial of access to the utility's poles, ducts, conduits and rights-of-way;

(2) The basis for the complainant's claim that the denial of access is improper;

(3) The remedy sought by the complainant;

(4) A copy of the written request to the utility for access to its poles, ducts, conduits or rights-of-way; and

(5) A copy of the utility's response to the written request including all information given by the utility to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a utility's written response, or if the utility denies the complainant any other information needed to establish a *prima facie* case.

[43 FR 36094, Aug. 15, 1978, as amended at 44 FR 31649, June 1, 1979; 45 FR 17014, Mar. 17, 1980; 52 FR 31770, Aug. 24, 1987; 61 FR 43025, Aug. 20, 1996; 61 FR 45619, Aug. 29, 1996]

### § 1.1405 File numbers.

Each complaint which appears to be essentially complete under § 1.1404 will be accepted and assigned a file number. Such assignment is for administrative purposes only and does not necessarily mean that the complaint has been found to be in full compliance with other sections in this subpart. Petitions for temporary stay will also be assigned a file number upon receipt.

[44 FR 31650, June 1, 1979]

### § 1.1406 Dismissal of complaints.

(a) The complaint shall be dismissed for lack of jurisdiction in any case where a suitable certificate has been filed by a State pursuant to § 1.1414 of this subpart. Such certificate shall be conclusive proof of lack of jurisdiction of this Commission. A complaint against a utility shall also be dismissed if the utility does not use or control poles, ducts, or conduits used or designated, in whole or in part, for wire communication or if the utility does not meet the criteria of § 1.1402(a) of this subpart.

(b) If the complaint does not contain substantially all the information required under § 1.1404 the Commission may dismiss the complaint or may require the complainant to file additional information. The complaint shall not be dismissed if the information is not available from public records or from the respondent utility after reasonable request.

(c) Failure by the complainant to respond to official correspondence or a request for additional information will be cause for dismissal.

(d) Dismissal under provisions of paragraph (b) of this section above will be with prejudice if the complaint has been dismissed previously. Such a complaint may be refiled no earlier than six months from the date it was so dismissed.

[43 FR 36094, Aug. 15, 1978, as amended at 44 FR 31650, June 1, 1979]

### §1.1407 Response and reply.

(a) Respondent shall have 30 days from the date the complaint was filed within which to file a response. Complainant shall have 20 days from the date the response was filed within which to file a reply. Extensions of time to file are not contemplated unless justification is shown pursuant to §1.46. Except as otherwise provided in §1.1403, no other filings and no motions other than for extension of time will be considered unless authorized by the Commission. The response should set forth justification for the rate, term, or condition alleged in the complaint not to be just and reasonable. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts and exhibits shall be verified by the person who prepares them. The response, reply, and other pleadings may be signed by counsel.

(b) The response shall be served on the complainant and all parties listed in complainant's certificate of service.

(c) The reply shall be served on the respondent and all parties listed in respondent's certificate of service.

(d) Failure to respond may be deemed an admission of the material factual allegations contained in the complaint.

[44 FR 31650, June 1, 1979]

### §1.1408 Number of copies and form of pleadings.

(a) An original and three copies of the complaint, response, and reply shall be filed with the Commission.

(b) All papers filed in the complaint proceeding must be drawn in conformity with the requirements of §§1.49, 1.50 and 1.52.

### §1.1409 Commission consideration of the complaint.

(a) In its consideration of the complaint, response, and reply, the Commission may take notice of any information contained in publicly available filings made by the parties and may accept, subject to rebuttal, studies that have been conducted. The Commission may also request that one or more of the parties make additional filings or provide additional information. Where one of the parties has failed to provide information required to be provided by these rules or requested by the Commission, or where costs, values or amounts are disputed, the Commission may estimate such costs, values or amounts it considers reasonable, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

(b) The complainant shall have the burden of establishing a *prima facie* case that the rate, term, or condition is not just and reasonable or that the denial of access violates 47 U.S.C. §224(f). If, however, a utility argues that the proposed rate is lower than its incremental costs, the utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the utility shall have the burden of proving that the denial was lawful, once a *prima facie* case is established by the complainant.

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(d) The Commission shall deny the complaint if it determines that the complainant has not established a *prima facie* case, or that the rate, term

or condition is just and reasonable, or that the denial of access was lawful.

(e) Section 1.1404 shall apply to the rate for any pole attachment used by a cable system operator solely to provide cable service. Until 47 U.S.C. 224(e) is implemented, §1.1404 shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

[43 FR 36094, Aug. 15, 1978, as amended at 52 FR 31770, Aug. 24, 1987; 61 FR 43025, Aug. 20, 1996; 61 FR 45619, Aug. 29, 1996]

### § 1.1410 Remedies.

If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may:

(a) Terminate the unjust and unreasonable rate, term, or condition;

(b) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the Commission; and

(c) Order a refund, or payment, if appropriate. The refund or payment will normally be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission from the date that the complaint, as acceptable, was filed, plus interest.

[44 FR 31650, June 1, 1979]

### § 1.1411 Meetings and hearings.

The Commission may decide each complaint upon the filings and information before it, may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute, or may, in its discretion, order evidentiary procedures upon any issues it finds to have been raised by the filings.

### § 1.1412 Enforcement.

If the respondent fails to obey any order imposed under this subpart, the Commission on its own motion or by motion of the complainant may order the respondent to show cause why it should not cease and desist from violating the Commission's order.

### § 1.1413 Forfeiture.

(a) If any person willfully fails to obey any order imposed under this subpart, or any Commission rule, or

(b) If any person shall in any written response to Commission correspondence or inquiry or in any application, pleading, report, or any other written statement submitted to the Commission pursuant to this subpart make any misrepresentation bearing on any matter within the jurisdiction of the Commission, the Commission may, in addition to any other remedies, including criminal penalties under section 1001 of Title 18 of the United States Code, impose a forfeiture pursuant to section 503(b) of the Communications Act, 47 U.S.C. 503(b).

### § 1.1414 State certification.

(a) If the Commission does not receive certification from a state that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,

(3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

(b) Upon receipt of such certification, the Commission shall give public notice. In addition, the Commission shall compile and publish from time to time, a listing of states which have provided certification.

(c) Upon receipt of such certification, the Commission shall forward any pending case thereby affected to the state regulatory authority, shall so notify the parties involved and shall give public notice thereof.

(d) Certification shall be by order of the state regulatory body or by a person having lawful delegated authority

under provisions of state law to submit such certification. Said person shall provide in writing a statement that he or she has such authority and shall cite the law, regulation or other instrument conferring such authority.

(e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:

(1) Within 180 days after the complaint is filed with the state, or

(2) Within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

[43 FR 36094, Aug. 15, 1978, as amended at 44 FR 31650, June 1, 1979; 50 FR 18659, May 5, 1985]

### § 1.1415 Other orders.

The Commission may issue such other orders and so conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice.

### § 1.1416 Imputation of rates; modification costs.

(a) A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(b) The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification as provided in subpart J of this part, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

[61 FR 43025, Aug. 20, 1996; 61 FR 45619, Aug. 29, 1996]

## Subpart K—Implementation of the Equal Access to Justice Act (EAJA) in Agency Proceedings

AUTHORITY: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 3786, Jan. 27, 1982, unless otherwise noted.

GENERAL PROVISIONS

### § 1.1501 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called *the EAJA* in this subpart), provides for the award of attorney's fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called *adversary adjudications*) before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust, or when the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures

and standards that the Commission will use to make them.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39898, July 31, 1996]

### § 1.1502 When the EAJA applies.

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985. The provisions of § 1.1505(b) apply to any adversary adjudications commenced on or after March 29, 1996.

[61 FR 39898, July 31, 1996]

### § 1.1503 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Any proceeding in which this Agency may fix a lawful present or future rate is not covered by the EAJA. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise ''adversary adjudications''.

(b) The Commission may designate a proceeding as an adversary adjudication for purposes of the EAJA by so stating in an order initiating the proceeding or designating the matter for hearing. The Commission's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the EAJA and matters specifically excluded from coverage, any awards made will include only fees and expenses related to covered issues.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987]

### § 1.1504 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the EAJA, the applicant must be a party, as defined in 5 U.S.C. 551(3), to the adversary adjudication for which it seeks an award. The applicant must show that it meets all conditions of eligibility set out in this paragraph and in paragraph (b) of this section.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable association as defined in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees;

(6) For purposes of § 1.1505(b), a small entity as defined in 5 U.S.C. 601.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The number of employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or

other interest, will be considered an affiliate for purposes of this part, unless the Administrative Law Judge determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the Administrative Law Judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39898, July 31, 1996]

### §1.1505 Standards for awards.

(a) A prevailing party may receive an award for fees and expenses incurred in connection either with an adversary adjudication, or with a significant and discrete substantive portion of an adversary adjudication in which the party has prevailed over the position of the Commission.

(1) The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based.

(2) An award will be reduced or denied if the Commission's position was substantially justified in law and fact, if special circumstances make an award unjust, or if the prevailing party unduly or unreasonably protracted the adversary adjudication.

(b) If, in an adversary adjudication arising from a Commission action to enforce a party's compliance with a statutory or regulatory requirement, the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with that decision, under the facts and circumstances of the case, the party shall be awarded the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The ''demand'' of the Commission means the express demand which led to the adversary adjudication, but it does not include a recitation by the Commission of the maximum statutory penalty in the administrative complaint, or elsewhere when accompanied by an express demand for a lesser amount.

(c) The burden of proof that an award should not be made is on the appropriate Bureau (see §1.21) whose representative shall be called ''Bureau counsel'' in this subpart K.

[61 FR 39899, July 31, 1996]

### §1.1506 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00, or for adversary adjudications commenced on or after March 29, 1996, $125.00, per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney; agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges its clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the Administrative Law Judge shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the service provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to

the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

(e) Fees may be awarded only for work performed after designation of a proceeding or after issuance of a show cause order.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

### § 1.1507 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $125.00 per hour in some or all of the types of proceedings covered by this part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with subpart C of this chapter. The petition should identify the rate the petitioner believes this agency should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. This agency will respond to the petition by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

### § 1.1508 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency. Counsel for that agency shall be treated as Bureau counsel for the purpose of this subpart.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

## INFORMATION REQUIRED FROM APPLICANTS

### § 1.1511 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall dentify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified; or

(2) Show that the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit the statement concerning its net worth if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in

determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39899, July 31, 1996]

### §1.1512 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in §1.1504(f) of this part) at the time the proceeding was designated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The Administrative Law Judge may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the Administrative Law Judge in a sealed enevelope labeled ''Confidential Financial Information'', accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosue of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on Bureau counsel, but need not be served on any other party to the proceeding. If the Administrative Law Judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act, §§0.441 through 0.466 of this chapter.

### §1.1513 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

### §1.1514 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, or when the demand of the Commission is substantially in excess of the decision in the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, *final disposition* means the later of

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an Administrative Law Judge becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Commission's order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such petition could have been filed;

(4) Issuance of a final order by the Commission or any other final resolution of a proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for reconsideration, or to a petition for judicial review; or

(5) Completion of judicial action on the underlying controversy and any subsequent Commission action pursuant to judicial mandate.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

PROCEDURES FOR CONSIDERING APPLICATIONS

**§ 1.1521 Filing and service of documents.**

Any application for an award or other pleading relating to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 1.1512(b) for confidential financial information.

**§ 1.1522 Answer to application.**

(a) Within 30 days after service of an application Bureau counsel may file an answer to the application. Unless Bureau counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award request.

(b) If Bureau counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the Administrative Law Judge upon request by Bureau counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of Bureau counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, Bureau counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.1526.

**§ 1.1523 Reply.**

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.1526.

**§ 1.1524 Comments by other parties.**

Any party to a proceeding other than the applicant and Bureau counsel may file comments on an application within 30 days after it is served or an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Administrative Law Judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

**§ 1.1525 Settlement.**

The applicant and Bureau counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Bureau counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If the Administrative Law Judge approves the proposed settlement, it shall be forwarded to the Commission for final approval.

**§ 1.1526 Further proceedings.**

(a) Ordinarily, the determination of an award will be made on the basis of

the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than excessive demand or substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency embodied an excessive demand or was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39899, July 31, 1996]

### §1.1527 Decision.

The Administrative Law Judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall include written findings and conclusions regarding the applicant's eligibility and whether the applicant was a prevailing party or whether the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the adversary adjudication, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position substantially justified, whether the applicant unduly protracted the proceedings, committed a willful violation of law, or otherwise acted in bad faith, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

[61 FR 39900, July 31, 1996]

### §1.1528 Commission review.

Either the applicant or Bureau counsel may seek Commission review of the initial decision on the application, or the Commission may decide to review the decision on its own initiative, in accordance with §§1.276 through 1.282 of this chapter. Except as provided in §1.1525, if neither the applicant nor Bureau counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 50 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the Administrative Law Judge for further proceedings.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39900, July 31, 1996]

### §1.1529 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

### §1.1530 Payment of award.

An applicant seeking payment of an award from the Commission shall submit to the General Counsel a copy of the Commission's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts, or a copy of the court's order directing payment. The Commission will pay the amount awarded to the applicant unless judicial review of the award or the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

## Subpart L—Random Selection Procedures for Mass Media Services

AUTHORITY: 47 U.S.C. 309(i).

SOURCE: 48 FR 27202, June 13, 1983, unless otherwise noted.

GENERAL PROCEDURES

**§ 1.1601 Scope.**

The provisions of this subpart, and the provisions referenced herein, shall apply to applications for initial licenses or construction permits or for major changes in the facilities of authorized stations in the following services:

(a) Low Power Television and Television Translator Broadcasting.

(b) [Reserved]

**§ 1.1602 Designation for random selection.**

Applications in the services specified in § 1.1601 shall be tendered, accepted or dismissed, filed, publicly noted and subject to random selection and hearing in accordance with any relevant rules. Competing applications for an initial license or construction permit shall be designated for random selection and hearing in accordance with the procedures set forth in §§ 1.1603 through 1.1623 and § 73.3572 of this chapter.

**§ 1.1603 Conduct of random selection.**

The random selection probabilities will be calculated in accordance with the formula set out in rules §§ 1.1621 through 1.1623.

[48 FR 27202, June 13, 1983, as amended at 48 FR 43330, Sept. 23, 1983]

**§ 1.1604 Post-selection hearings.**

(a) Following the random selection, the Commission shall announce the ''tentative selectee'' and, where permitted by § 73.3584 invite Petitions to Deny its application. Following the responsive pleadings thereto, the Commission shall:

(1) In the case of low power television stations, take action pursuant to either § 73.3591, § 73.3592 or § 73.3593.

(b) If, after such hearing as may be necessary, the Commission determines that the ''tentative selectee'' has met the requirements of § 73.3591(a) it will make the appropriate grant. If the Commission is unable to make such a determination, it shall order that another random selection be conducted from among the remaining mutually exclusive applicants, in accordance with the provisions of this subpart.

(c) If, on the basis of the papers before it, the Commission determines that a substantial and material question of fact exists, it shall designate that question for hearing. Hearings may be conducted by the Commission or, in the case of a matter which requires oral testimony for its resolution, an Administrative Law Judge.

(2) [Reserved]

**§ 1.1621 Definitions.**

(a) *Medium of mass communications* means:

(1) A daily newspaper;

(2) A cable television system; and

(3) A license or construction permit for

(i) A television station, including low power TV or TV translator,

(ii) A standard (AM) radio station,

(iii) An FM radio station,

(iv) A direct broadcast satellite transponder under the editorial control of the licensee, and

(v) A Multipoint Distribution Service station.

(b) *Minority group* means:

(1) Blacks,

(2) Hispanics

(3) American Indians,

(4) Alaska Natives,

(5) Asians, and

(6) Pacific Islanders.

(c) *Owner* means the applicant and any individual, partnership, trust, unincorporated association, or corporation which:

(1) If the applicant is a proprietorship, is the proprietor,

(2) If the applicant is a partnership, holds any partnership interest,

(3) If the applicant is a trust, is the beneficiary thereof,

(4) If the applicant is an unincorporated association or non-stock corporation, is a member, or, in the case of a nonmembership association or corporation, a director,

(5) If the applicant is a stock corporation, is the beneficial owner of voting shares.

NOTE 1: For purposes of applying the diversity preference to such entities only the other ownership interests of those with a 1% or more beneficial interest in the entity will be cognizable.

NOTE 2: For the purposes of this section, a daily newspaper is one which is published four or more days per week, which is in the English language, and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

NOTE 3: For the purposes of applying the diversity preference, the ownership interests of the spouse of an applicant's principal will not presumptively be attributed to the applicant.

[48 FR 27202, June 13, 1983, as amended at 50 FR 5992, Feb. 13, 1985]

### §1.1622 Preferences.

(a) Any applicant desiring a perference in the random selection shall so indicate as part of its application. Such an applicant shall list any owner who owns all or part of a medium of mass communications or who is a member of a minority group, together with a precise identification of the ownership interest held in such medium of mass communications or name of the minority group, respectively. Such an applicant shall also state whether more than 50% of the ownership interests in it are held by members of minority groups and the number of media of mass communications more than 50% of whose ownership interests are held by the applicant and/or its owners.

(b) Preference factors as incorporated in the percentage calculations in §1.1623, shall be granted as follows:

(1) Applicants, more than 50% of whose ownership interests are held by members of minority groups—2:1.

(2) Applicants whose owners in the aggregate hold more than 50% of the ownership interests in no other media of mass communications—2:1.

(3) Applicants whose owners in the aggregate hold more than 50% of the ownership interest in one, two or three other media of mass communications—1.5:1.

(c) Applicants may receive preferences pursuant to §1.1622(b)(1) and either §1.1622 (b)(2) or (b)(3).

(d) Preferences will be determined on the basis of ownership interests as of the date of release of the latest Public Notice announcing the acceptance of the last-filed mutually exclusive application.

(e) No preferences pursuant to §1.1622 (b)(2) or (b)(3) shall be granted to any LPTV or MDS applicant whose owners, when aggregated, have an ownership interest of more than 50 percent in the following media of mass communications, if the service areas of those media as described herein wholly encompass or are encompassed by the protected predicted contour, computed in accordance with §74.707(a), of the low power TV or TV translator station for which the license or permit is sought, or computed in accordance with §21.902(d), of the MDS station for which the license or permit is sought.

(1) AM broadcast station—predicted or measured 2 mV/m groundwave contour, computed in accordance with §73.183 or §73.186;

(2) FM broadcast station—predicted 1 mV/m contour, computed in accordance with §73.313;

(3) TV broadcast station—Grade A contour, computed in accordance with §73.684;

(4) Low power TV or TV translator station—protected predicted contour, computed in accordance with §74.707(a);

(5) Cable television system franchise area, nor will the diversity preference be available to applicants whose proposed transmitter site is located within the franchise area of a cable system in which its owners, in the aggregate, have an ownership interest of more than 50 percent.

(6) Daily newspaper community of publication, nor will the diversity preference be available to applicants whose proposed transmitter site is located within the community of publication of a daily newspaper in which its owners, in the aggregate, have an ownership interest of more than 50 percent.

(7) Multipoint Distribution Service—station service area, computed in accordance with §21.902(d).

[48 FR 27202, June 13, 1983, as amended at 50 FR 5992, Feb. 13, 1985; 50 FR 11161, Mar. 20, 1985]

### §1.1623 Probability calculation.

(a) All calculations shall be computed to no less than three significant digits. Probabilities will be truncated to the number of significant digits used in a particular lottery.

(b) Divide the total number of applicants into 1.00 to determine pre-preference probabilities.

(c) Multiply each applicant's pre-preference probability by the applicable preference from § 1.1622 (b)(2) or (b)(3).

(d) Divide each applicant's probability pursuant to paragraph (c) of this section by the sum of such probabilities to determine intermediate probabilities.

(e) Add the intermediate probabilities of all applicants who received a preference pursuant to § 1.1622 (b)(2) or (b)(3).

(f)(1) If the sum pursuant to paragraph (e) of this section is .40 or greater, proceed to paragraph (g) of this section.

(2) If the sum pursuant to paragraph (e) of this section is less than .40, then multiply each such intermediate probability by the ratio of .40 to such sum. Divide .60 by the number of applicants who did not receive a preference pursuant to § 1.1622 (b)(2) or (b)(3) to determine their new intermediate probabilities.

(g) Multiply each applicant's probability pursuant to paragraph (f) of this section by the applicable preference ratio from § 1.1622(b)(1).

(h) Divide each applicant's probability pursuant to paragraph (g) of this section by the sum of such probabilities to determine the final selection percentage.

## Subpart M [Reserved]

## Subpart N—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission

AUTHORITY: 29 U.S.C. 794.

SOURCE: 52 FR 16258, May 4, 1987, unless otherwise noted.

### § 1.1801 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 1.1802 Applications.

This part applies to all programs or activities conducted by the Federal Communications Commission. The programs or activities of entities that are licensed or certified by the Federal Communications Commission are not covered by these regulations.

### § 1.1803 Definitions.

For purposes of this part, the term—

*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Commission* means Federal Communications Commission.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the Commission's alleged discriminatory action in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling

stock or other conveyances, or other real or personal property.

*Individual with handicaps* means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Commission as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Commission as having such an impairment.

*Qualified individual with handicaps* means—

(1) With respect to any Commission program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Commission can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1.1840.

*Section 504* means section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955, and the Rehabilitation Act Amendments of 1986, sec. 103(d), Pub. L. 99–506, 100 Stat. 1810. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

### §§ 1.1804–1.1809 [Reserved]

### § 1.1810 Self-evaluation.

(a) The Commission shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Commission shall proceed to make the necessary modifications.

(b) The Commission shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals

with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Commission shall, until three years following completion of the self-evaluation, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

### § 1.1811 Notice.

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission, and make such information available to them in such manner as the Managing Director finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and these regulations.

### §§ 1.1812–1.1829 [Reserved]

### § 1.1830 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b)(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Commission may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Commission establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Commission are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

**§§ 1.1831–1.1839 [Reserved]**

**§ 1.1840 Employment.**

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, as well as the procedures set forth in the Basic Negotiations Agreement Between the Federal Communications Commission and National Treasury Employees Union (effective June 22, 1982) and Subchapter III of the Civil Service Reform Act of 1978, 5 U.S.C. 7121(d), shall apply to employment in federally conducted programs or activities.

**§§ 1.1841–1.1848 [Reserved]**

**§ 1.1849 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 1.1850, no qualified individual with handicaps shall, because the Commission's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

**§ 1.1850 Program accessibility: Existing facilities.**

(a) *General.* The Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1.1850(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Managing Director after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals

with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151—4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three (3) years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission shall develop, within six (6) months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Commission shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one (1) year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan.

### § 1.1851 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements and standards of the Architectural Barriers Act, 42 U.S.C. 4151—4157, as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

### §§ 1.1852–1.1859 [Reserved]

### § 1.1860 Communications.

(a) The Commission shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Commission shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the Commission shall give primary consideration to the requests of the individual with handicaps.

(ii) The Commission need not provide individually prescribed devices, readers for personal use or study, or other devices, of a personal nature.

(2) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunications systems shall be used.

(b) The Commission shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Commission shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with §1.1860 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Managing Director after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

**§§1.1861–1.1869 [Reserved]**

**§1.1870 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Commission.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791.

(c) The Managing Director shall be responsible for coordinating implementation of this section. Complaints may be sent to the Handicapped Coordinator, Office of Managing Director, Federal Communications Commission, 1919 M Street NW., Room 852, Washington, DC 20554.

(d) *Acceptance of complaint.* (1) The Commission shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within one-hundred eighty (180) days of the alleged act of discrimination. The Commission may extend this time period for good cause.

(2) If the Commission receives a complaint that is not complete, the complainant will be notified within thirty (30) days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within thirty (30) days of receipt of this notice, the Commission shall dismiss the complaint without prejudice.

(e) If the Commission receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Commission shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151—4157, is not readily accessible to and usable by individuals with handicaps.

(g) Within one-hundred eighty (180) days of the receipt of a complete complaint for which it has jurisdiction, the

Commission shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within ninety (90) days of receipt from the Commission of the letter required by § 1.1870(g). The Commission may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Room 202, Washington, DC 20554.

(j) The Commission shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the Commission determines that it needs additional information from the complainant, it shall have sixty (60) days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Commission may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

**§§ 1.1871–1.1899 [Reserved]**

## Subpart O—Collection of Claims Owed the United States

AUTHORITY: 31 U.S.C. 3701; 31 U.S.C. 3711 *et seq.;* 5 U.S.C. 5514; 4 CFR parts 101–105; 5 CFR part 550.

SOURCE: 54 FR 403, Jan. 6, 1989, unless otherwise noted.

GENERAL PROVISIONS

**§ 1.1901 Definitions.**

(a) The term *administrative offset* means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) The term *agency* means the Federal Communications Commission (Commission) or any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, or and an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(c) The term *agency head* means the Chairman of the Federal Communications Commission.

(d) The terms *appropriate agency official* or *designee* means the Managing Director of the Commission or such other official as may be named by the Managing Director.

(e) The terms *claim* and *debt* are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency. They include amounts owing to the United States on account of loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, and forfeitures (except those arising under the Uniform Code of Military Justice), and other similar sources.

(f) The term *creditor agency* means the agency to which the debt is owed.

(g) The term *delinquent* means a claim or debt which has not been paid by the date specified in the agency's written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement with the agency.

(h) The term *disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other

authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

(i) The term *employee* means a current employee of the Commission or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserve).

(j) The term *FCCS* means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR parts 101–105.

(k) The term *paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

(l) The term *referral for litigation* means referral to the Department of Justice for appropriate legal proceedings except where the Commission has the statutory authority to handle the litigation itself.

(m) The term *salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) The term *waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C 710, 5 U.S.C. 8346(b), or any other law.

### § 1.1902 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (see 41 CFR part 101–41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations. (See 48 CFR part 32). If not otherwise provided for in the FAR system, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. 605(a)), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any, contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims.

(d) Tax claims are also excluded from the coverage of this regulation.

### § 1.1903 Use of procedures.

Procedures authorized by this regulation (including, but not limited to, disclosure to a consumer reporting agency, contracting for collection services, administrative offset and salary offset) may be used singly or in combination, so long as the requirements of applicable law and regulation are satisfied.

### § 1.1904 Conformance to law and regulations.

The requirements of applicable law (31 U.S.C. 3701–3719, as amended by Pub. L. 97–365, 96 Stat. 1749) have been implemented in government wide standards:

(a) The Regulations of the Office of Personnel Management (5 CFR part 550) and

(b) The Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR parts 101–105).

Not every item in the above described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the

terms stated in these regulations, the Commission will proceed in any actions taken in accordance with applicable requirements found in the standards referred to in this section.

### § 1.1905 Other procedures; collection of forfeiture penalties.

Nothing contained in these regulations is intended to require the Commission to duplicate administrative or other proceedings required by contract or other laws or regulations, nor do these regulations supercede procedures required by other statutes or regulations. In particular, the assessment and collection of monetary forfeiture penalties imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. 503, 504 and 47 CFR 1.80. After compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings.

### § 1.1906 Informal action.

Nothing contained in these regulations is intended to preclude utilization of informal administrative actions or remedies which may be available.

### § 1.1907 Return of property.

Nothing contained in this regulation is intended to deter the Commission from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

### § 1.1908 Omissions not a defense.

The failure of the Commission to comply with any provision in this regulation shall not serve as a defense to the debt.

## ADMINISTRATIVE OFFSET—CONSUMER REPORTING AGENCIES—CONTRACTING FOR COLLECTION

### § 1.1911 Demand for payment.

(a) Written demands for payment shall be made promptly upon a debtor in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not not require rebuttal. In determining the timing of demand letters, the Commission will give due regard to the need to act promptly so that, as a general rule, if it becomes necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interest (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions under this chapter, including immediate referral for litigation.

(b) The initial demand letter will inform the debtor of:

(1) The basis for the indebtedness and the right of the debtor to request review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (§§ 1.1940 and 1.1941 of this subpart) and;

(3) The date by which payment is to be made, which normally should not be more than 30 days from the date that the initial demand letter was mailed or hand-delivered.

(c) As appropriate to the circumstances, the Commission may include either in the initial demand letter or in subsequent letters, matters relating to alternative methods of payment, policies with respect to use of consumer reporting agencies and collection services, the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) The Commission will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtors who dispute the debt that they must furnish available evidence to support their contentions.

(e) If, either prior to the initiation of, at any time during, or after completion of the demand cycle, the Commission

determines to pursue administrative offset, then the procedures specified in §§1.1912 and 1.1913 as applicable, will be followed. The availability of funds for offset and the agency's determination to pursue that remedy, release the agency from the necessity of further compliance with paragraphs (a), (b) and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of §§1.1912 and 1.1913 as applicable.

**§1.1912 Collection by administrative offset.**

(a) Collection by administrative offset will be undertaken in accordance with these regulations on all claims which are liquidated or certain in amount, in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) Whether collection by administrative offset is feasible is a determination to be made by the agency on a case-by-case basis, in the exercise of sound discretion. The Commission will consider not only whether administrative offset can be accomplished practically, but also whether offset is best suited to further and protect all of the Government's interest. In appropriate circumstances, the Commission may give due consideration to the debtor's financial condition and is not required to use offset in every instance in which there is an available source of funds. The Commission may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(2) [Reserved]

(b) Before the offset is made, a debtor shall be provided with the following: Written notice of the nature and amount of the debt, and the agency's intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt.

(1) The Commission will exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination will weigh the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission will normally accept a repayment agreeement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(2) In cases where the procedural requirements specified in paragraph (b) of this section have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance or pursuant to 47 U.S.C. 503, 504 and 47 CFR 1.80, the agency is not required to duplicate those requirements before taking administrative offset.

(3) The Commission may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as under 28 U.S.C. 2415.

(4) The Commission is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(i) Debts owed by any State or local Government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) Any case in which collection of the claim or type of claim by administrative offset is explicitly provided for or prohibited by another statute.

(5) The Commission may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraph (b) of this section if:

(i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(6) The Commission will obtain credit reports on delinquent accounts to identify opportunities for administrative offset of amounts due to a delinquent debtor when other collection techniques have been unsuccessful.

(c) Type of hearing or review. (1) For purposes of this section, whenever the Commission is required to provide a hearing or review within the agency, it shall provide the debtor with a reasonable opportunity for an oral hearing when:

(i) Any applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(ii) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the Commission will carefully document all significant matters discussed at the hearing.

(2) The section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency will make its determination on the request for waiver or reconsideration based upon a ''paper hearing,'' that is, a review of the written record.

(d) Appropriate use will be made of the cooperative efforts of other agencies in affecting collection by administrative offset. Generally, the Commission will not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States unless the requesting agency has not complied with the applicable provisions of these standards or the offset otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and full compliance with the provisions of this section has taken place.

(g) When collecting multiple debts by administrative offset, the Commission will apply the recovered amounts to those debts in accordance with the best interest of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation.

### § 1.1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, the Commission may request that moneys which are due and payable to a

debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment, or a minimal number of payments, debts owned to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, the Commission shall include written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The Commission has complied with the applicable statutes, regulations and procedures of the Office of Personnel Management; and

(3) The Commission has complied with the requirements of §1.1912 of this subpart, including any required hearing or review.

(c) Once the Commission decides to request administrative offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and ''flag'' the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory payment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the Commission collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, it shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the Commission's determination with respect to the amount and validity of the debt, its determination as to waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

**§1.1914 Collection in installments.**

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this subpart should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The Commission will obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum. If the Commission agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debtor and debtor's ability to pay. If possible, the installment payments should be of sufficient size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month will be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause.

(b) If the debtor owes more than one debt and designates how a voluntary installment is to be applied among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Commission will apply payments to various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

**§ 1.1915 Exploration of compromise.**

The Commission may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in Part 103 of the Federal Claims Collection Standards (4 CFR part 103).

**§ 1.1916 Suspending or terminating collection action.**

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the Federal Claims Collection Standards (4 CFR part 104).

**§ 1.1917 Referrals to the Department of Justice or the General Accounting Office.**

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the Federal Claims Collection Standards (4 CFR part 105).

**§ 1.1918 Use of consumer reporting agencies.**

(a) The term *individual* means a natural person, and the term *consumer reporting agency* has the meaning provided in the Federal Claims Collection Act, as amended, at 31 U.S.C. 3701(a)(3) or the Fair Credit Reporting Act, at 15 U.S.C. 168a(f).

(b) The Commission may disclose to a consumer reporting agency, from a system of records, information that an individual is responsible for a claim if—

(1) Notice required by section 5 U.S.C. 552a(e)(4) indicates that information in the system may be disclosed to a consumer reporting agency;

(2) The claim has been reviewed and it is decided that the claim is valid and overdue;

(3) The Commission has notified the individual in writing—

(i) That payment of the claim is overdue;

(ii) That, within not less than 60 days after sending the notice, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for that claim;

(iii) Of the specific information to be disclosed to the consumer reporting agency; and

(iv) Of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to adminstrative appeal or review of the claim; and

(4) The individual has not—

(i) Repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the agency has agreed to; or

(ii) Filed for review of the claim under paragraph (g) of this section;

(c) The Commission shall—

(1) Disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

(2) Verify or correct promptly information about the claim, on request of a consumer reporting agency for verification of any or all information so disclosed; and

(3) Obtain satisfactory assurances from each consumer reporting agency that they are complying with all laws of the United States relating to providing consumer credit information.

(d) The Commission shall ensure that information disclosed to the consumer reporting agency is limited to—

(1) Information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the claim; and

(3) The agency or program under which the claim arose.

(e) All accounts in excess of $100 that have been delinquent more than 31 days will normally be referred to a consumer reporting agency.

(f) Before disclosing information to a consumer reporting agency, the Commission shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice.

(g) Before disclosing information to a consumer reporting agency, the Commission shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

(h) Under the same provisions as described above, the Commission may disclose to a credit reporting agency, information relating to a debtor other than a natural person. Such commercial debt accounts are not covered by the Privacy Act.

**§1.1919 Contracting for collection services.**

(a) The Commission has authority to contract for collection services to recover delinquent debts, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation is retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor must be required to account strictly for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable the Commission to determine whether to pursue collection through litigation or to terminate collection efforts; and

(5) The contractor must agree to provide any data contained in its files relating to paragraphs (a) (1), (2), and (3) of §105.2 of the Federal Claims Collection Standards (4 CFR part 105) upon returning an account to the Commission for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts. (1) The Commission may fund a collection service contract on a fixed-fee basis, that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. Payment of the fee under this type of contract must be charged to available agency appropriations.

(2) The Commission may also fund a collection service contract on a contingent-fee basis, that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice.

(3) The Commission may enter into a contract under paragraph (b)(1) of this section only if and to the extent provided in advance appropriation acts or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under paragraph (b)(2) of this section, or unless the receipt qualifies as a refund to the appropriation, or unless otherwise specifically provided by law, the Commission must deposit all amounts recovered under collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(c) The Commission will consider the use of collection agencies at any time after the account is 61 days past due. In any case where an account is six months or more past due, the Commission may turn it over to a collection agency unless referred for litigation or unless arrangements have been made for a workout procedure or the Commission has exercised its authority to write off the debt pursuant to §1.1916.

(d) The Commission will generally not use a collection agency to collect a delinquent debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

SALARY OFFSET

**§1.1925 Purpose.**

This section provides the standards to be followed by FCC in implementing 5 U.S.C. 5514 to recover a debt from the pay account of an FCC employee, and establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

**§1.1926 Scope.**

(a) *Coverage.* This section applies to agencies and employees as defined by §1.1901.

(b) *Applicability.* This section and 5 U.S.C. 5514 apply in recovering certain

debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (4 CFR parts 101–105).

(1) Excluded debts or claims. The procedures contained in this section do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*) or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g. travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Waiver requests and claims to the General Accounting Office. This section does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

(c) *Time Limit.* Under 4 CFR 102.3(b)(3) offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in § 102.3(b)(3).

### § 1.1927 Notification.

(a) Salary offset deductions shall not be made unless the Managing Director of the Commission, or such other official as may be named in the future by the Managing Director of the Commission, provides the employee at least 30 days before any deduction written notice stating at a minimum:

(1) The agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the agency's policy concerning interest, penalties, and administrative costs (§§ 1.1940 and 1.1941 of this regulation), a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Managing Director (or designee) of the Commission and documented in agency files (4 CFR 102.2(e)).

(7) The employee's right to a hearing conducted by an official arranged by the agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by this subpart.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That the final decision in the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, part 752 of title 5, Code

of Federal Regulations, or any other applicable statutes or regulations.

(ii) Penalties under the False Claims Act sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date of delivery, or shall be mailed by certified mail return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required by the Commission for any adjustment to pay arising out of an employee's election of coverage, or change in coverage, under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

**§ 1.1928 Hearing.**

(a) *Petition for Hearing.* (1) A hearing may be requested by filing a written petition with the Managing Director of the Commission, or such other official as may be named by the Managing Director of the Commission, stating why the employee believes the determination of the agency concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteenth (15) calendar day deadline referred to above, the Commission will nevertheless accept the petition if the employee can show that the delay was due to circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (3) above, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) *Type of Hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the agency and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent himself or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt, and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the agency.

**§ 1.1929 Deduction from pay.**

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States should be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum, or, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection will normally be made in installments.

(2) The installments shall not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date: of the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions must be made over a period not greater than the anticipated period of employment except as provided in § 1.1930.

(b) [Reserved]

**§ 1.1930 Liquidation from final check or recovery from other payment.**

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance of the debt may be made from a final payment of any nature, including, but not limited, to, final salary payment or lump-sum leave due the employee as the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1.1913 of this regulation.

**§ 1.1931 Non-waiver of rights by payments.**

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

**§ 1.1932 Refunds.**

(a) Refunds shall promptly be made when—

(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

**§ 1.1933 Interest, penalties and administrative costs.**

The assessment of interest, penalties and administrative costs shall be in accordance with §§ 1.1940 and 1.1941 of this regulation.

**§ 1.1934 Recovery when paying agency is not creditor agency.**

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date of the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the paying agency, the

creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a) (1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its claim to the employee's paying agency for collection pursuant to § 1.1930. The paying agency must certify the total amount of its collection and provide copies to the creditor agency and the employee as stated in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that there has been full compliance with the provisions of this section. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (31 U.S.C. 3716 and 4 CFR 102.4)

(b) *Responsibilities of paying agency—*

(1) *Complete claim.* When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officials established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the paying agency receives an incomplete debt claim from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided, and a properly certified debt claim received, before action will be taken to collect from the employee's current pay account.

(3) *Review.* The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) *Employees who transfer from one paying agency to another.*

(1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

### § 1.1935 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in appendix

A of 5 CFR part 581 for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in appendix A of 5 CFR part 581 to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

INTEREST, PENALTIES, ADMINISTRATIVE COSTS AND OTHER SANCTIONS

**§ 1.1940 Assessment.**

(a) Except as provided in paragraph (h) of this section, or § 1.1941, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. Before assessing these charges, the Commission will mail or hand-deliver a written notice to the debtor explaining the agency's requirements concerning these charges.

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency. If the Commission should use an ''advance billing'' procedure—that is, if it mails a bill before a debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury Tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Financial Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. The Commission may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the Commission may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be assessed on accrued interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment schedule.

(d) The Commission shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incured in processing and handling the debt because it became delinquent. Calculation of administrative costs shall be based upon actual costs incurred or upon costs analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

(e) The Commission shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to the outstanding principal.

(g) The Commission will waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. It may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, the Commission may waive, in whole or in

part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in part 103 of the Federal Claims Collection Standards (4 CFR part 103) relating to the compromise of claims (without regard to the amount of the debt), or if it determines that collection of these charges would be against equity and good conscience, or not in the best interest of the United States. Waiver under the first sentence of this paragraph (g) is mandatory. Under the second and third sentences, it may be exercised under appropriate circumstances. Examples of appropriate circumstances include:

(1) Waiver of interest pending the agency's disposition of a request for reconsideration, administrative review, or waiver of the underlying debt under a permissive statute, and

(2) Waiver of interest where the Commission has accepted an installment plan under § 1.1914, and there is no indication of fault or lack of good faith on the part of the debtor.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 104.2(c)(1) of the Federal Claims Collection Standards (4 CFR part 104).

### § 1.1941 Exemptions.

(a) The provisions concerning interest and penalty on claims contained in 31 U.S.C. 3717 do not apply:

(1) To debts owed by any State or local government;

(2) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of), October 25, 1982;

(3) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) However, the Commission is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

### § 1.1942 Other sanctions.

The remedies and sanctions available to the Commission in this subpart are not exclusive. The Commission may impose other sanctions, where permitted by law, for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In such cases, the Commission will provide notice, as required by law, to the debtor prior to imposition of any such sanction.

## COOPERATION WITH THE INTERNAL REVENUE SERVICE

### § 1.1950 Reporting discharged debts to the Internal Revenue Service.

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099–G or any other form prescribed by the Service, when:

(a) The principal amount of the debt not in dispute is $600 or more; and

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

### § 1.1951 Offset against tax refunds.

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

## GENERAL PROVISIONS CONCERNING INTERAGENCY REQUESTS

### § 1.1952 Interagency requests.

(a) Requests to the Commission by other Federal agencies for administrative or salary offset shall be in writing and forwarded to the Financial Services Branch, FCC, 1919 M Street NW., Washington, DC 20554.

(b) Requests by the Commission to other Federal agencies holding funds payable to the debtor will be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If the agency's rules governing this matter are not readily available or identifiable, the request will be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from the Commission shall be accompanied by a certification that the debtor owes the debt (including the amount) and that the procedures for administrative or salary offset contained in this subpart, or comparable procedures prescribed by the requesting agency, have been fully complied with. The Commission will cooperate with other agencies in effecting collection.

(d) Requests to and from the Commission shall be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days will be forwarded 10 calendar days prior to the expiration of the first 30-day period.

## Subpart P—Implementation of the Anti-Drug Abuse Act of 1988

SOURCE: 57 FR 187, Jan. 3, 1992, unless otherwise noted.

### § 1.2001 Purpose.

To determine eligibility for professional and/or commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal and/or state courts under authority granted in 21 U.S.C. 862.

[60 FR 39269, Aug. 2, 1995]

### § 1.2002 Applicants required to submit information.

(a) In order to be eligible for any new, modified, and/or renewed instrument of authorization from the Commission, including but not limited to, authorizations issued pursuant to sections 214, 301, 302, 303(1), 308, 310(d), 318, 319, 325(b), 351, 361(b), 362(b), 381, and 385 of the Communications Act of 1934, as amended, by whatever name that instrument may be designated, all applicants shall certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. 21 U.S.C. 862. If a section 5301 certification has been incorporated into the FCC application form being filed, the applicant need not submit a separate certification. If a section 5301 certification has not been incorporated into the FCC application form being filed, the applicant shall be deemed to have certified by signing the application, unless an exhibit is included stating that the signature does not constitute such a certification and explaining why the applicant is unable to certify. If no FCC application form is involved, the applicant must attach a certification to its written application. If the applicant is unable to so certify, the applicant shall be ineligible for the authorization for which it applied, and will have 90 days from the filing of the application to comply with this rule. If a section 5301 certification has been incorporated into the FCC application form, failure to respond to the question concerning certification shall result in dismissal of the application pursuant to the relevant processing rules.

(b) A party to the application, as used in paragraph (a) of this section shall include:

(1) If the applicant is an individual, that individual;

(2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; and

(3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership.

(c) The provisions of paragraphs (a) and (b) of this section are not applicable to the Amateur Radio Service, the Citizens Band Radio Service, the Radio Control Radio Service, to users in the Public Mobile Services and the Private Radio Services that are not individually licensed by the Commission, or to

Federal, State or local governmental entities or subdivisions thereof.

[57 FR 187, Jan. 3, 1992, as amended at 58 FR 8701, Feb. 17, 1993; 60 FR 39269, Aug. 2, 1995]

### §1.2003 Applications affected.

The certification required by §1.2002 must be filed with the following applications as well as any other requests for authorization filed with the Commission, regardless of whether a specific form exists.

FCC 301 Application for Construction Permit for Commercial Broadcast Station;

FCC 301–A Application for Authority to Operate a Broadcast Station by Remote Control or to Make Changes in a Remote Control Authorization;

FCC 302 Application for New Broadcast Station License;

FCC 302—FM Application for FM Broadcast Station License;

FCC 303–S Application for Renewal of License for AM, FM, TV, Translator, or LPTV Station;

FCC 307 Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit;

FCC 308 Application for Permit to Deliver Programs to Foreign Broadcast Stations;

FCC 309 Application for Authority to Construct or Make Changes in an International or Experimental Broadcast Station;

FCC 310 Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License;

FCC 311 Application for Renewal of an International or Experimental Broadcast License;

FCC 313 Application for Authorization in the Auxiliary Radio Broadcast Services;

FCC 313–R Application for Renewal of Auxiliary Broadcast License;

FCC 314 Application for Consent to Assignment of Broadcast Station Construction Permit or License;

FCC 315 Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License;

FCC 316 Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License;

FCC 327 Application for Cable Television Relay Service Station Authorzation;

FCC 330 Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Stations;

FCC 330–L Application for Instructional Television Fixed Station License;

FCC 330–R Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License;

FCC 340 Application for Construction Permit for Noncommercial Educational Broadcast Station;

FCC 345 Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station;

FCC 346 Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station;

FCC 347 Application for a Low Power TV, TV Translator or TV Booster Station License;

FCC 349 Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station;

FCC 350 Application for an FM Translator or FM Booster Station License;

FCC 401 Application for New or Modified Common Carrier Radio Station Authorization Under part 22 of this chapter.

FCC 402 Application for Station Authorization in the Private Operational Fixed Microwave Radio Service;

FCC 402–R Renewal Notice and Certification in the Private Operational Fixed Microwave Radio Service;

FCC 403 Application for Radio Station License or Modification Thereof Under parts 23 or 25 of this chapter;

FCC 404 Application for Aircraft Radio Station License;

FCC 405 Application for Renewal of Radio Station License;

FCC 405–A Application for Renewal of Radio Station License and/or Notification of Change to License Information;

FCC 405–B Ship/Aircraft License Expiration Notice and/or Renewal Application;

FCC 406 Application for Ground Station Authorization in the Aviation Services;

FCC 407 Application for New or Modified Radio Station Construction Permit;

FCC 409 Airborne Mobile Radio Telephone License Application;

FCC 410 Registration of Canadian Radio Station Licensee and Application for Permit to Operate (Land Mobile);

FCC 442 Application for New or Modified Radio Station Authorization Under part 5 of this chapter—Experimental Radio Service (Other than Broadcast);

FCC 490 Application for Assignment or Transfer of Control Under part 22 of this chapter;

FCC 493 Application for Earth Station Authorization or Modification of Station License (Proposed);

FCC 494 Application for a New or Modified Microwave Radio Station License Under part 21 of this chapter;
FCC 494–A Certification of Completion of Construction Under part 21 of this chapter;
FCC 503 Application for Land Radio Station License in the Maritime Services;
FCC 506 Application for Ship Radio Station License;
FCC 574 Application for Private Land Mobile and General Mobile Radio Services;
FCC 574–R Application for Renewal of Radio Station License;
FCC 701 Application for Additional Time to Construct a Radio Station;
FCC 702 Application for Consent to Assignment of Radio Station Construction Permit or License;
FCC 703 Application for Consent to Transfer Control of Corporation Holding Station License;
FCC 704 Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License;
FCC 730 Application for Registration of Equipment to be Connected to the Telephone Network;
FCC 731 Application for Equipment Authorization;
FCC 753 Restricted Radiotelephone Operator Permit Application;
FCC 755 Application for Restricted Radiotelephone Operator Permit—Limited Use;
FCC 756 Application for Commercial Radio Operator License.

[57 FR 187, Jan. 3, 1992, as amended at 57 FR 48333, Oct. 23, 1992; 59 FR 63051, Dec. 7, 1994]

## Subpart Q—Competitive Bidding Proceedings

SOURCE: 59 FR 44293, Aug. 26, 1994, unless otherwise noted.

GENERAL PROCEDURES

### § 1.2101 Purpose.

The provisions of this subpart implement section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66), authorizing the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for certain initial licenses.

### § 1.2102 Eligibility of applications for competitive bidding.

(a) Mutually exclusive initial applications in the following services or classes of services are subject to competitive bidding:

(1) Interactive Video Data Service (*see* 47 CFR part 95, subpart F). This paragraph does not apply to applications which were filed prior to July 26, 1993;

(2) Marine Public Coast Stations (*see* 47 CFR part 80, subpart J);

(3) Multipoint Distribution Service and Multichannel Multipoint Distribution Service (*see* 47 CFR part 21, subpart K). This paragraph does not apply to applications which were filed prior to July 26, 1993;

(4) Exclusive Private Carrier Paging above 900 MHz (*see* 47 CFR part 90, subpart P.)

(5) Public Mobile Services (*see* 47 CFR part 22), except in the 800 MHz Air-Ground Radiotelephone Service, and in the Rural Radio Service. This paragraph does not apply to applications in the cellular radio service, such as cellular unserved area applications, that were filed prior to July 26, 1993;

(6) Specialized Mobile Radio Service (SMR) (*see* 47 CFR part 90, subpart S) including applications based on finder's preferences for frequencies allocated to the SMR service (*see* 47 CFR 90.173); and

(7) Personal Communications Services (PCS) (*see* 47 CFR part 24).

(8) General Wireless Communications Service (GWCS) (see part 26 of this chapter).

(9) Local Multipoint Distribution Service (LMDS) (see 47 CFR part 101).

NOTE TO PARAGRAPH (A): To determine the rules that apply to competitive bidding in the foregoing services, specific service rules should also be consulted.

(b) The following types of license applications are not subject to competitive bidding procedures:

(1) Applications for renewal of licenses;

(2) Applications for modification of license; provided, however, that the Commission may determine that applications for modification that are mutually exclusive with other applications should be subject to competitive bidding;

(3) Applications for subsidiary communications services. A ''subsidiary communications service'' is a class of service where the signal for that service is indivisible from that of the main

channel signal and that main channel signal is exempt from competitive bidding under other provisions of these rules. *See, e.g.,* § 1.2102(c) (exempting broadcast services). Examples of such subsidiary communications services are those transmitted on subcarriers within the FM baseband signal (*see* 47 CFR 73.295), and signals transmitted within the Vertical Blanking Interval of a broadcast television signal; and

(4) Applications for frequencies used as an intermediate link or links in the provision of a continuous, end-to-end service where no service is provided directly to subscribers over the frequencies. Examples of such intermediate links are:

(i) Point-to-point microwave facilities used to connect a cellular radio telephone base station with a cellular radio telephone mobile telephone switching office; and

(ii) Point-to-point microwave facilities used as part of the service offering in the provision of telephone exchange or interexchange service.

(c) Applications in the following services or classes of services are not subject to competitive bidding:

(1) Alaska-Private Fixed Stations (*see* 47 CFR part 80, subpart O);

(2) Broadcast radio (AM and FM) and broadcast television (VHF, UHF, LPTV) under 47 CFR part 73;

(3) Broadcast Auxiliary and Cable Television Relay Services (*see* 47 CFR part 74, subparts D, E, F, G, H and L and part 78, subpart B);

(4) Instructional Television Fixed Service (*see* 47 CFR part 74, subpart I);

(5) Maritime Support Stations (*see* 47 CFR part 80, subpart N);

(6) Marine Operational Fixed Stations (*see* 47 CFR part 80, subpart L);

(7) Marine Radiodetermination Stations (*see* 47 CFR part 80, subpart M);

(8) Personal Radio Services (*see* 47 CFR part 95), except applications filed after July 26, 1993, in the Interactive Video Data Service (*see* 47 CFR part 95, subpart F);

(9) Public Safety, Industrial/Land Transportation, General and Business Radio categories above 800 MHz, including finder's preference requests for frequencies not allocated to the SMR service (*see* 47 CFR 90.173), and including, until further notice of the Commission, the Automated Vehicle Monitoring Service (*see* 47 CFR 90.239);

(10) Private Land Mobile Radio Services between 470–512 MHz (*see* 47 CFR part 90, subparts B–F), including those based on finder's preferences, (*see* 47 CFR 90.173);

(11) Private Land Mobile Radio Services below 470 MHz (*see* 47 CFR part 90, subparts B–F) except in the 220 MHz band (*see* 47 CFR part 90, subpart T), including those based on finder's preferences (*see* 47 CFR § 90.173); and

(12) Private Operational Fixed Services (*see* 47 CFR part 94).

[59 FR 44293, Aug. 26, 1994, as amended at 60 FR 40718, Aug. 9, 1995; 62 FR 23163, Apr. 29, 1997]

### § 1.2103 Competitive bidding design options.

(a) The Commission will select the competitive bidding design(s) to be used in auctioning particular licenses or classes of licenses on a service-specific basis. The choice of competitive bidding design will generally be made pursuant to the criteria set forth in PP Docket No. 93–253, FCC 94–61, adopted March 8, 1994, available for purchase from the International Transcription Service, Inc., 2100 M St. NW., suite 140, Washington, DC 20037, telephone (202) 857–3800, but the Commission may design and test alternative methodologies. The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

(1) Simultaneous multiple round auctions (using remote or on-site electronic bidding);

(2) Sequential multiple round auctions (using either oral ascending or remote and/or on-site electronic bidding); and/or

(3) Sequential or simultaneous single round auctions (using either sealed paper or remote and/or on-site electronic bidding).

(b) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses or authorizations, in addition to bids on individual licenses or authorizations. The Commission may require that to be declared the high bid, a combinatorial

bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction. The Commission may also allow bidders to submit contingent bids on individual and/or combinations of licenses.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

[59 FR 44293, Aug. 26, 1994, as amended at 62 FR 13542, Mar. 21, 1997]

**§ 1.2104 Competitive bidding mechanisms.**

(a) *Sequencing.* The Commission will establish the sequence in which multiple licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish suggested minimum opening bids on a service-specific basis.

(e) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate the auctions within a reasonable time.

(f) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity.

(g) *Withdrawal, Default and Disqualification Penalties.* As specified below, when the Commission conducts a simultaneous multiple round auction pursuant to § 1.2103, the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (g)(1) plus an additional penalty equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission. When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(h) The Commission will generally release information concerning the identities of bidders before each auction but may choose, on an auction-by-auction basis, to withhold the identity of the bidders associated with bidder identification numbers.

(i) The Commission may delay, suspend, or cancel an auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of

the current or some previous round or cancel the competitive bidding in its entirety.

### §1.2105 Bidding application and certification procedures; prohibition of collusion.

(a) *Submission of Short Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate filing fee set forth by Public Notice. Unless otherwise provided by Public Notice, the Form 175 need not be accompanied by an upfront payment (see §1.2106).

(1) All Form 175s will be due:

(i) On the date(s) specified by Public Notice; or

(ii) In the case of application filing dates which occur automatically by operation of law (*see, e.g.*, 47 CFR 22.902), on a date specified by Public Notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) If the applicant applies as a designated entity pursuant to §1.2110, a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under §1.2110.

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure.

(ix) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to paragraph (a)(2)(viii) of this section regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid; and

(x) Certification that the applicant is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency.

NOTE TO PARAGRAPH (A): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and Dismissal of Form 175.* (1) Any Form 175 that is not signed or otherwise does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. The application will be dismissed with prejudice and the upfront payment, if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. Form 175 may be amended or modified to make minor changes or correct minor errors in the application (such as typographical errors). The Commission will classify all amendments as major or minor, pursuant to rules applicable to specific services. An application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicants who fail to correct defects in their applications in a timely manner as specified by Public Notice will have their applications dismissed with no opportunity for resubmission.

(c) *Prohibition of collusion.* (1) Except as provided in paragraphs (c)(2), (c)(3) and (c)(4) of this section, after the filing of short-form applications, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for licenses, provided the parties to the agreement have not applied for licenses in any of the same geographic license areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for licenses in the same geographic license area, provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses in the same geographic license area(s); and

(ii) The arrangements do not result in any change in control of an applicant.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in the membership of consortia or joint bidding arrangements.

(6) For purposes of this paragraph:

(i) The term *applicant* shall include the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interests and any stock interest amounting to 5 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity; and

(ii) The term *bids or bidding strategies* shall include capital calls or requests for additional funds in support of bids or bidding strategies.

EXAMPLE FOR PARAGRAPH (C): Company A is an applicant in area 1. Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's

Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either

(1) That it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or

(2) That it has not communicated with and will not communicate with Company D or anyone else concerning D's bids or bidding strategy.

[59 FR 44293, Aug. 26, 1994, as amended at 59 FR 64162, Dec. 13, 1994; 62 FR 13543, Mar. 21, 1997]

### §1.2106 Submission of upfront payments.

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. No interest will be paid on upfront payments.

(b) Upfront payments must be made by wire transfer in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(c) If an upfront payment is not in compliance with the Commission's Rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the required deposit of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal penalties are owed by that bidder.

(e) In accordance with the provisions of paragraph (d), in the event a penalty is assessed pursuant to §1.2104 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default penalty before being applied toward any additional payment obligations that the high bidder may have.

[59 FR 44293, Aug. 26, 1994, as amended at 62 FR 13543, Mar. 21, 1997]

### §1.2107 Submission of down payment and filing of long-form applications.

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Within ten (10) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the ''down payment'') as are necessary to bring its total deposits (not including upfront payments applied to satisfy penalties) up to twenty (20) percent of its high bid(s). (In single round sealed bid auctions conducted under §1.2103, however, bidders may be required to submit their down payments with their bids.) This down payment must be made by wire transfer in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Winning bidders who are qualified designated entities eligible for installment payments under §1.2110(d) are only required to bring their total deposits up to ten (10) percent of their winning bid(s). Such designated entities must pay the remainder of the twenty (20) percent down payment within ten (10) business days of grant of their application. See §1.2110(e) (1) and (2). Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license or authorization, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable payments. No interest on any down payment will be paid to the bidders.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the ''long-form application'') pursuant to the rules governing the service in which the applicant is the high bidder (unless it has already submitted such an application, as contemplated by §1.2105(a)(1)(b). Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Specific procedures for filing electronically and manually filed applications will be set out by Public Notice. While Form 600 may be filed either electronically or manually, beginning January 1, 1998, all applications must be filed electronically. Those applicants who file applications manually must also include a copy of all attachments and any other supporting documents on a 3.5 inch diskette in separate ASCII text (.TXT) file formats. An applicant that fails to submit the required long-form application under this paragraph and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in §1.2104.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to §1.2105.

[59 FR 44293, Aug. 26, 1994, as amended at 61 FR 49075, Sept. 18, 1996; 62 FR 13543, Mar. 21, 1997]

### §1.2108 Procedures for filing petitions to deny against long-form applications.

(a) Where petitions to deny are otherwise provided for under the Act or the commission's Rules, and unless other service-specific procedures for the filing of such petitions are provided for elsewhere in the Commission's Rules, the procedures in this section shall apply to the filing of petitions to deny the long-form applications of winning bidders.

(b) Within thirty (30) days after the Commission gives public notice that a long-form application has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such opposition and replies will be those provided in §1.45.

(d) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold a evidentiary hearing and will deny the application.

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

### §1.2109 License grant, denial, default, and disqualification.

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to

remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in §1.2104(g)(2). In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in §1.2107(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the penalty set forth in §1.2104(g)(2). In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

[59 FR 44293, Aug. 26, 1994, as amended at 62 FR 13544, Mar. 21, 1997]

### §1.2110 Designated entities.

(a) Designated entities are small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

(b) Definitions.

(1) *Small businesses.* The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

(2) Businesses owned by members of minority groups and/or women. Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1 percent voting interest. For applicants that are partnerships, every general partner either must be a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. Members of minority groups include Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

(3) *Rural telephone companies.* A rural telephone company is any local exchange carrier including affiliates (as defined in 1.2110(b)(4)), with 100,000 access lines or fewer.

(4) *Affiliate.* (i) An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant under §24.709 (both referred to herein as ''the applicant'') if such individual or entity—

(A) directly or indirectly controls or has the power to control the applicant, or

(B) is directly or indirectly controlled by the applicant, or

(C) is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(D) has an ''identity of interest'' with the applicant.

(ii) Nature of *control* in determining affiliation.

(A) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

*Example* An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(B) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(C) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

*Example* In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(iii) Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

*Example* Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(A) Spousal Affiliation. Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(B) Kinship Affiliation. Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context *immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that the family members are estranged, the family ties are remote, or the family members are not closely involved with each other in business matters.

*Example* A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation Y is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(iv) Affiliation through stock ownership.

(A) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(B) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she

owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(C) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(v) Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

*Example 1.* If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had come owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

*Example 2.* If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

*Example 3.* If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(vi) Affiliation under voting trusts.

(A) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(B) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(C) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(vii) Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(viii) Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(ix) Affiliation through contractual relationships. Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(x) Affiliation under joint venture arrangements.

(A) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied,

to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a point venture.

(B) The parties to a joint venture are considered to be affiliated with each other.

(c) The Commission may set aside specific licenses for which only eligible designated entities, as specified by the Commission, may bid.

(d) The Commission may permit partitioning of service areas in particular services for eligible designated entities.

(e) The Commission may permit small businesses (including small businesses owned by women, minorities, or rural telephone companies that qualify as small businesses) and other entities determined to be eligible on a service-specific basis, which are high bidders for licenses specified by the Commission, to pay the full amount of their high bids in installments over the term of their licenses pursuant to the following:

(1) Unless otherwise specified, each eligible applicant paying for its license(s) on an installment basis must deposit by wire transfer in the manner specified in § 1.2107(b) sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within ten (10) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(2) Within ten (10) business days of the grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. Failure to remit the required payment will make the bidder liable to pay default payments pursuant to § 1.2104(g)(2).

(3) Upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment payment plan and that it must execute a promissory note and security agreement as a condition of the installment payment plan. Unless other terms are specified in the rules of particular services, such plans will:

(i) Impose interest based on the rate of U.S. Treasury obligations (with maturities closest to the duration of the license term) at the time of licensing;

(ii) Allow installment payments for the full license term;

(iii) Begin with interest-only payments for the first two years; and

(iv) Amortize principal and interest over the remaining term of the license.

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.

(ii) Upon default or in anticipation of default of one or more installment payments, a licensee may request that the Commission permit a three to six month grace period, during which no installment payments need be made. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining term of the license.

(iii) Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the license will automatically cancel and the Commission will initiate debt collection procedures pursuant to part 1, subpart O.

(f) The Commission may award bidding credits (i.e., payment discounts) to eligible designated entities. Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures.

(g) The Commission may establish different upfront payment requirements for categories of designated entities in competitive bidding rules of particular auctionable services.

(h) The Commission may offer designated entities a combination of the available preferences or additional preferences.

(i) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that effect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both *de facto* and *de jure* control of the entity. Such information must be maintained at the licensees' facilities or by their designated agents for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(j) The Commission may, on a service-specific basis, permit consortia, each member of which individually meets the eligibility requirements, to qualify for any designated entity provisions.

(k) The Commission may, on a service-specific basis, permit publicly-traded companies that are owned by members of minority groups or women to qualify for any designated entity provisions.

[59 FR 44293, Aug. 26, 1994; 60 FR 52865, Oct. 11, 1995; 62 FR 13544, Mar. 21, 1997]

**§1.2111 Assignment or transfer of control: unjust enrichment.**

(a) *Reporting requirement.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission's statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the local consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below market financing).

(b) *Unjust enrichment payment: set-aside.* As specified in this paragraph an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor pursuant to a set-aside for eligible designated entities under §1.2110(c), or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of comparable non-set-

aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No payment will be required if:

(1) The license is transferred or assigned more than five years after its initial issuance, unless otherwise specified; or

(2) The proposed transferee or assignee is an eligible designated entity under § 1.2110(c) or the service-specific competitive bidding rules of the particular service, and so certifies.

(c) *Unjust enrichment payment: installment financing.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing installment financing available to designated entities under § 1.2110(d) will be required to pay the full amount of the remaining principal balance as a condition of the license transfer. No payment will be required if the proposed transferee or assignee assumes the installment payment obligations of the transferor or assignor, and if the proposed transferee or assignee is itself qualified to obtain installment financing under § 1.2110(d) or the service-specific competitive bidding rules of the particular service, and so certifies.

(d) *Unjust enrichment payment: bidding credits.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing bidding credits available to eligible designated entities under § 1.2110(e) or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and will be required to make an unjust enrichment payment (Payment) to the government by wire transfer or cashier's check before consent will be granted. The Payment will be the sum of the amount of the bidding credit plus interest at the rate applicable for installment financing in effect at the time the license was awarded. *See* § 1.2110(e). No payment will be required if the proposed transferee or assignee is an eligible designated entity under § 1.2110(e) or the service-specific competitive bidding rules of the particular service, and so certifies.

## Subpart R—Implementation of Section 4(g)(3) of the Communications Act: Procedures Governing Acceptance of Unconditional Gifts, Donations and Bequests

SOURCE: 59 FR 38128, July 27, 1994, unless otherwise noted.

### § 1.3000 Purpose and scope.

The purpose of this subpart is to implement the Telecommunications Authorization Act of 1992 which amended the Communications Act by creating section 4(g)(3), 47 U.S.C. 154(g)(3). The provisions of this subpart shall apply to gifts, donations and bequests made to the Commission itself. Travel reimbursement for attendance at, or participation in, government-sponsored meetings or events required to carry out the Commission's statutory or regulatory functions may also be accepted under this subpart. The acceptance of gifts by Commission employees, most notably gifts of food, drink and entertainment, is governed by the government-wide standards of employee conduct established at 5 CFR part 2635. Travel, subsistence and related expenses for non-government-sponsored meetings or events will continue to be accepted pursuant to the Government Employees Training Act, 41 U.S.C. 4111 or 31 U.S.C. 1353, and its General Services Administration's implementing regulations, 41 CFR 304–1.8, as applicable.

### § 1.3001 Definitions.

For purposes of this subpart:

(a) The term *agency* means the Federal Communications Commission.

(b) The term *gift* means any unconditional gift, donation or bequest of real, personal and other property (including voluntary and uncompensated services as authorized under 5 U.S.C. 3109).

(c) The terms *agency ethics official, designated agency ethics official, employee, market value, person,* and *prohibited source,* have the same meaning as found in 5 CFR 2635.102, 2635.203.

**§1.3002 Structural rules and prohibitions.**

(a) *General prohibitions.* An employee shall not:

(1) Directly or indirectly, solicit or coerce the offering of a gift, donation or bequest to the Commission from a regulated entity or other prohibited source; or

(2) Accept gifts of cash pursuant to this subpart.

(b) *Referral of offers to designated agency ethics official.* Any person who seeks to offer any gift to the Commission under the provisions of this subpart shall make such offer to the Commission's designated agency ethics official. In addition, any Commission employee who is contacted by a potential donor or the representative thereof for the purpose of discussing the possibility of making a gift, donation or bequest to the Commission shall immediately refer such person or persons to the Commission's designated agency ethics official. The designated agency ethics official shall, in consultation with other agency ethics officials, make a determination concerning whether acceptance of such offers would create a conflict of interest or the appearance of a conflict of interest. Agency ethics officials may also advise potential donors and their representatives of the types of equipment, property or services that may be of use to the Commission and the procedures for effectuating gifts set forth in this subpart. The Commission may, in its discretion, afford public notice before accepting any gift under authority of this subpart.

**§1.3003 Mandatory factors for evaluating conflicts of interest.**

No gift shall be accepted under this subpart unless a determination is made that its acceptance would not create a conflict of interest or the appearance of a conflict of interest. In making conflict of interest determinations, designated agency ethics officials shall consider the following factors:

(a) Whether the benefits of the intended gift will accrue to an individual employee and, if so—

(1) Whether the employee is responsible for matters affecting the potential donor that are currently before the agency; and

(2) The significance of the employee's role in any such matters;

(b) The nature and sensitivity of any matters pending at the Commission affecting the intended donor;

(c) The timing of the intended gift;

(d) The market value of the intended gift;

(e) The frequency of other gifts made by the same donor; and

(f) The reason underlying the intended gift given in a written statement from the proposed donor.

**§1.3004 Public disclosure and reporting requirements.**

(a) *Public disclosure of gifts accepted from prohibited sources.* The Commission's Security Operations Office, Office of the Managing Director, shall maintain a written record of gifts accepted from prohibited sources by the Commission pursuant to section 4(g)(3) authority, which will include:

(1) The identity of the prohibited source;

(2) A description of the gift;

(3) The market value of the gift;

(4) Documentation concerning the prohibited source's reason for the gift as required in §1.3003(f);

(5) A signed statement of verification from the prohibited source that the gift is unconditional and is not contingent on any promise or expectation that the Commission's receipt of the gift will benefit the proposed donor in any regulatory matter; and

(6) The date the gift is accepted by the Commission.

(b) *Reporting Requirements for all gifts.* The Commission shall file a semi-annual report to Congress listing the gift, donor and value of all gifts accepted from any donor under this subpart.

## Subpart S—Preemption of Restrictions That "Impair" a Viewer's Ability To Receive Television Broadcast Signals, Direct Broadcast Satellite Services or Multichannel Multipoint Distribution Services

SOURCE: 61 FR 46562, Sept. 4, 1996, unless otherwise noted.

### § 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulation, or any private covenant, homeowners' association rule or similar restriction on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property, that impairs the installation, maintenance, or use of: An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska; or an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or an antenna that is designed to receive television broadcast signals; is prohibited, to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance or use,

(ii) Unreasonably increases the cost of installation, maintenance or use, or

(iii) Precludes reception of an acceptable quality signal.

(3) No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (c) or (d) of this section. No fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined safety objective that is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size, weight and appearance to these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve an historic district listed or eligible for listing in the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470a, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described above.

(c) Local governments or associations may apply to the Commission for a waiver of this rule under § 1.3. Waiver requests will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted.

Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(d) Parties may petition the Commission for a declaratory ruling under §1.2, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission will be put on public notice. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(e) In any Commission proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance or use of devices designed for over-the-air reception of video programming services shall be on the party that seeks to impose or maintain the restriction.

(f) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 1919 M St. NW., Washington, DC 20554. Copies of the petitions and related pleadings will be available for public inspection in the Cable Reference Room in Washington, DC. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

EFFECTIVE DATE NOTE: At 61 FR 46562, Sept. 4, 1996, §1.4000 was added. The section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

## Subpart T—Exempt Telecommunications Companies

### §1.5000 Purpose.

The purpose of part 1, subpart S, is to implement Section 34(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §79 et seq., as added by Section 103 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996).

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

### §1.5001 Definitions.

(a) For the purpose of this part, the terms ''telecommunications services'' and ''information services'' shall have the same meanings as provided in the Communications Act of 1934, as amended;

(b) Commission shall be defined as the Federal Communications Commission; and

(c) ''ETC'' shall be defined as an exempt telecommunications company.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

### §1.5002 Contents of application and procedure for filing.

(a) A person seeking status as an exempt telecommunications company (applicant) must file with the Commission with respect to the company or companies which are eligible companies owned or operated by the applicant, and serve on the Securities and Exchange Commission and any affected State commission, the following:

(1) A brief description of the planned activities of the company or companies which are or will be eligible companies owned and/or operated by the applicant;

(2) A sworn statement, by a representative legally authorized to bind the applicant, attesting to any facts or representations presented to demonstrate eligibility for ETC status, including a representation that the applicant is engaged directly, or indirectly, wherever located, through one or more affiliates (as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935), and exclusively in the business of providing:

(i) Telecommunications services;

(ii) Information services;

(iii) Other services or products subject to the jurisdiction of the Commission; or

(iv) Products or services that are related or incidental to the provision of a product or service described in paragraph (a)(1)(i), (a)(1)(ii), or (a)(1)(iii); and

(3) A sworn statement, by a representative legally authorized to bind the applicant, certifying that the applicant satisfies part 1, subpart P, of the Commission's regulations, 47 CFR 1.2001 through 1.2003, regarding implementation of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

### § 1.5003 Effect of filing.

A person applying in good faith for a Commission determination of exempt telecommunications company status will be deemed to be an exempt telecommunications company from the date of receipt of the application until the date of Commission action pursuant to § 1.5004.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

### § 1.5004 Commission action.

If the Commission has not issued an order granting or denying an application within 60 days of receipt of the application, the application will be deemed to have been granted as a matter of law.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

### § 1.5005 Notification of Commission action to the Securities and Exchange Commission.

The Secretary of the Commission will notify the Securities and Exchange Commission whenever a person is determined to be an exempt telecommunications company.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

### § 1.5006 Procedure for notifying Commission of material change in facts.

If there is any material change in facts that may affect an ETC's eligibility for ETC status under Section 34(a)(1) of the Public Utility Holding Company Act of 1935, the ETC must, within 30 days of the change in fact, either:

(a) Apply to the Commission for a new determination of ETC status;

(b) File a written explanation with the Commission of why the material change in facts does not affect the ETC's status; or

(c) Notify the Commission that it no longer seeks to maintain ETC status.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

### § 1.5007 Comments.

(a) Any person wishing to be heard concerning an application for ETC status may file comments with the Commission within fifteen (15) days from the release date of a public notice regarding the application, or such other period of time set by the Commission. Any comments must be limited to the adequacy or accuracy of the application.

(b) Any person who files comments with the Commission must also serve copies of all comments on the applicant.

(c) An applicant has seven (7) days to reply to any comments filed regarding the adequacy and accuracy of its application, or such other period of time as set by the Commission. Such reply shall be served on the commenters.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

## APPENDIX A TO PART 1—A PLAN OF COOPERATIVE PROCEDURE IN MATTERS AND CASES UNDER THE PROVISIONS OF SECTION 410 OF THE COMMUNICATIONS ACT OF 1934

(Approved by the Federal Communications Commission October 25, 1938, and approved by the National Association of Railroad and Utilities Commissioners on November 17, 1938.)

#### PRELIMINARY STATEMENT CONCERNING THE PURPOSE AND EFFECT OF THE PLAN

Section 410 of the Communications Act of 1934 authorizes cooperation between the Federal Communications Commission, hereinafter called the Federal Commission, and the State commissions of the several States, in the administration of said Act. Subsection (a) authorizes the reference of any matter arising in the administration of said Act to a board to be composed of a member or members from each of the States in which the wire, or radio communication affected by or involved in the proceeding takes place, or is proposed. Subsection (b) authorizes conferences by the Federal Commission with State commissions regarding the relationship between rate structures, accounts,

charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commissions and of said Federal Commission and joint hearings with State commissions in connection with any matter with respect to which the Federal Commission is authorized to act.

Obviously, it is impossible to determine in advance what matters should be the subject of a conference, what matters should be referred to a board, and what matters should be heard at a joint hearing of State commissions and the Federal Commission. It is understood, therefore, that the Federal Commission or any State commission will freely suggest cooperation with respect to any proceedings or matter affecting any carrier subject to the jurisdiction of said Federal Commission and of a State commission, and concerning which it is believed that cooperation will be in the public interest.

To enable this to be done, whenever a proceeding shall be instituted before any commission, Federal or State, in which another commission is believed to be interested, notice should be promptly given each such interested commission by the commission before which the proceeding has been instituted. Inasmuch, however, as failure to give notice as contemplated by the provisions of this plan will sometimes occur purely through inadvertence, any such failure should not operate to deter any commission from suggesting that any such proceeding be made the subject matter of cooperative action, if cooperation therein is deemed desirable.

It is understood that each commission whether or not represented in the National Association of Railroad and Utilities Commissioners, must determine its own course of action with respect to any proceeding in the light of the law under which, at any given time, it is called upon to act, and must be guided by its own views of public policy; and that no action taken by such Association can in any respect prejudice such freedom of action. The approval by the Association of this plan of cooperative procedure, which was jointly prepared by the Association's standing Committee on Cooperation between Federal and State commissions and said Federal Commission, is accordingly recommendatory only; but such plan is designed to be, and it is believed that it will be, a helpful step in the promotion of cooperative relations between the State commissions and said Federal Commission.

NOTICE OF INSTITUTION OF PROCEEDING

Whenever there shall be instituted before the Federal Commission any proceeding involving the rates of any telephone or telegraph carrier, the State commissions of the States affected thereby will be notified immediately thereof by the Federal Commission, and each notice given a State commission will advise such commission that, if it deems the proceeding one which should be considered under the cooperative provisions of the Act, it should either directly or through the National Association of Railroad and Utilities Commissioners, notify the Federal Commission as to the nature of its interest in said matter and request a conference, the creation of a joint board, or a joint hearing as may be desired, indicating its preference and the reasons therefor. Upon receipt of such request the Federal Commission will consider the same and may confer with the commission making the request and with other interested commission, or with representatives of the National Association of Railroad and Utilities Commissioners, in such manner as may be most suitable; and if cooperation shall appear to be practicable and desirable, shall so advise each interested State commission, directly, when such cooperation will be by joint conference or by reference to a joint board appointed under said sec. 410 (a), and, as hereinafter provided, when such cooperation will be by a joint hearing under said sec. 410(b).

Each State commission should in like manner notify the Federal Commission of any proceeding instituted before it involving the toll telephone rates or the telegraph rates of any carrier subject to the jurisdiction of the Federal Commission.

PROCEDURE GOVERNING JOINT CONFERENCES

The Federal Commission, in accordance with the indicated procedure, will confer with any State commission regarding any matter relating to the regulation of public utilities subject to the jurisdiction of either commission. The commission desiring a conference upon any such matter should notify the other without delay, and thereupon the Federal Commission will promptly arrange for a conference in which all interested State commissions will be invited to be present.

PROCEDURE GOVERNING MATTERS REFERRED TO A BOARD

Whenever the Federal Commission, either upon its own motion or upon the suggestion of a State commission, or at the request of any interested party, shall determine that it is desirable to refer a matter arising in the administration of the Communications Act of 1934 to a board to be composed of a member or members from the State or States affected or to be affected by such matter, the procedure shall be as follows:

The Federal Commission will send a request to each interested State commission to nominate a specified number of members to serve on such board.

The representation of each State concerned shall be equal, unless one or more of the States affected chooses to waive such right of equal representation. When the

member or members of any board have been nominated and appointed, in accordance with the provisions of the Communications Act of 1934, the Federal Commission will make an order referring the particular matter to such board, and such order shall fix the time and place of hearing, define the force and effect the action of the board shall have, and the manner in which its proceedings shall be conducted. The rules of practice and procedure, as from time to time adopted or prescribed by the Federal Commission, shall govern such board, as far as applicable.

PROCEDURE GOVERNING JOINT HEARINGS

Whenever the Federal Commission, either upon its own motion or upon suggestions made by or on behalf of any interested State commission or commissions, shall determine that a joint hearing under said sec. 410(b) is desirable in connection with any matter pending before said Federal Commission, the procedure shall be as follows:

(a) The Federal Commission will notify the general solicitor of the National Association of Railroad and Utilities Commissioners that said Association, or, if not more than eight States are within the territory affected by the proceeding, the State commissions interested, are invited to name Cooperating Commissioners to sit with the Federal Commission for the hearing and consideration of said proceeding.

(b) Upon receipt of any notice from said Federal Commission inviting cooperation, if not more than eight States are involved, the general solicitor shall at once advise the State commissions of said States, they being represented in the membership of the association, of the receipt of such notice, and shall request each such commission to give advice to him in writing, before a date to be indicated by him in his communication requesting such advice (1) whether such commission will cooperate in said proceeding, (2) if it will, by what commissioner it will be represented therein.

(c) Upon the basis of replies received, the general solicitor shall advise the Federal Commission what States, if any, are desirous of making the proceeding cooperative and by what commissioners they will be represented, and he shall give like advice to each State commission interested therein.

(d) If more than eight States are interested in the proceeding, because within territory for which rates will be under consideration therein, the general solicitor shall advise the president of the association that the association is invited to name a cooperating committee of State commissioners representing the States interested in said proceeding.

The president of the association shall thereupon advise the general solicitor in writing (1) whether the invitation is accepted on behalf of the association, and (2) the names of commissioners selected to sit as a cooperating committee. The president of the association shall have the authority to accept or to decline said invitation for the association, and to determine the number of commissioners who shall be named on the cooperating committee, provided that his action shall be concurred in by the chairman of the association's executive committee. In the event of any failure of the president of the association and chairman of its executive committee to agree, the second vice president of the association (or the chairman of its committee on cooperation between State and Federal commissions, if there shall be no second vice president) shall be consulted, and the majority opinion of the three shall prevail. Consultations and expressions of opinion may be by mail or telegraph.

(e) If any proceeding, involving more than eight States, is pending before the Federal Commission, in which cooperation has not been invited by that Commission, which the association's president and the first and second vice presidents, or any two of them, consider should be made a cooperating proceeding, they may instruct the general solicitor to suggest to the Federal Commission that the proceeding be made a cooperative proceeding; and any State commission considering that said proceeding should be made cooperative may request the president of the association or the chairman of its executive committee to make such suggestion after consideration with the executive officers above named. If said Federal Commission shall assent to the suggestion, made as aforesaid, the president of the association shall have the same authority to proceed, and shall proceed in the appointment of a cooperating committee, as is provided in other cases involving more than eight States, wherein the Federal Commission has invited cooperation, and the invitation has been accepted.

(f) Whenever any case is pending before the Federal Commission involving eight States or less, which a commission of any of said States considers should be made cooperative, such commission, either directly or through the general solicitor of the association, may suggest to the Federal Commission that the proceeding be made cooperative. If said Federal Commission accedes to such suggestion, it will notify the general solicitor of the association to that effect and thereupon the general solicitor shall proceed as is provided in such case when the invitation has been made by the Federal Commission without State commission suggestion.

APPOINTMENT OF COOPERATING COMMISSIONERS BY THE PRESIDENT

In the appointment of any cooperating committee, the president of the association

shall make appointments only from commissions of the States interested in the particular proceeding in which the committee is to serve. He shall exercise his best judgment to select cooperating commissioners who are especially qualified to serve upon cooperating committees by reason of their ability and fitness; and in no case shall he appoint a commissioner upon a cooperating committee until he shall have been advised by such commissioner that it will be practicable for him to attend the hearings in the proceeding in which the committee is to serve, including the arguments therein, and the cooperative conferences, which may be held following the submission of the proceeding, to an extent that will reasonably enable him to be informed upon the issues in the proceeding and to form a reasonable judgment in the matters to be determined.

TENURE OF COOPERATORS

(a) No State commissioner shall sit in a cooperative proceeding under this plan except a commissioner who has been selected by his commission to represent it in a proceeding involving eight States or less, or has been selected by the president of the association to sit in a case involving more than eight States, in the manner hereinbefore provided.

(b) A commissioner who has been selected, as hereinbefore provided, to serve as a member of a cooperating committee in any proceeding, shall without further appointment, and without regard to the duration of time involved, continue to serve in said proceeding until the final disposition thereof, including hearings and conferences after any order or reopening, provided that he shall continue to be a State commissioner.

(c) No member of a cooperating committee shall have any right or authority to designate another commissioner to serve in his place at any hearing or conference in any proceeding in which he has been appointed to serve.

(d) Should a vacancy occur upon any cooperating committee, in a proceeding involving more than eight States, by reason of the death of any cooperating commissioner, or of his ceasing to be a State commissioner, or of other inability to serve, it shall be the duty of the president of the association to fill the vacancy by appointment, if, after communication with the chairman of the cooperating committee, it be deemed necessary to fill such vacancy.

(e) In the event of any such vacancy occurring upon a cooperating committee involving not more than eight States, the vacancy shall be filled by the commission from which the vacancy occurs.

COOPERATING COMMITTEE TO DETERMINE RESPECTING ANY REPORT OF STATEMENT OF ITS ATTITUDE

(a) Whenever a cooperating committee shall have concluded its work, or shall deem such course advisable, the committee shall consider whether it is necessary and desirable to make a report to the interested State commissions, and, if it shall determine to make a report, it shall cause the same to be distributed through the secretary of the association, or through the general solicitor to all interested commissions.

(b) If a report of the Federal Commission will accompany any order to be made in said proceeding, the Federal Commission will state therein the concurrence or nonconcurrence of said cooperating committee in the decision or order of said Federal Commission.

CONSTRUCTION HEREOF IN CERTAIN RESPECTS EXPRESSLY PROVIDED

It is understood and provided that no State or States shall be deprived of the right of participation and cooperation as hereinbefore provided because of nonmembership in the association. With respect to any such State or States, all negotiations herein specified to be carried on between the Federal Commission and any officer of such association shall be conducted by the Federal Commission directly with the chairman of the commission of such State or States.

[28 FR 12462, Nov. 22, 1963, as amended at 29 FR 4801, Apr. 4, 1964]

# PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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2.1 Terms and definitions.

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