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amendment(s), petition(s), pleading(s), or any combination thereof.

(f) Notwithstanding §21.29(e), amendments will not be granted that seek more than a *pro forma* change of ownership or control (bankruptcy, death, or legal disability) of a pending Multipoint Distribution Service application, and any Multipoint Distribution Service application will be dismissed that seeks more than a *pro forma* change of ownership or control.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985; 58 FR 11797, Mar. 1, 1993]

§ 21.30 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§1.41 through 1.52, and 1.821 through 1.825;

(3) Contain specific allegations of fact (except for those of which official notice may be taken), which shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Except as provided in §21.901(d)(1) of this part regarding Instructional Television Fixed Service licensees, be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto, or identifying the tentative selectee of a random selection proceeding in the Multichannel Multipoint Distribution Service or for Multipoint Distribution Service H—channel stations (unless the Commission otherwise extends the deadline); and

(5) Contains a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) The Commission will classify as informal objections:

(1) Any petition to deny not filed in accordance with paragraph (a) of this section;

(2) Any petition to deny (or for other forms of relief) an application to which the thirty (30) day public notice period of §21.27(c) does not apply; or

(3) Any comments on, or objections to, the grant of an application when the comments or objections do not conform to either paragraph (a) of this section or other Commission rules and requirements.

(c) The Commission will consider informal objections, but will not necessarily discuss them specifically in a formal opinion if:

(1) The informal objection is filed at least one day before Commission action on the application; and

(2) The informal objection is signed by the submitting person (or his representative) and discloses his interest.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985; 50 FR 45614, Nov. 1, 1985; 52 FR 37779, Oct. 9, 1987; 55 FR 46009, Oct. 31, 1990; 56 FR 57816, Nov. 14, 1991]

§ 21.31 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume ''harmful electrical interference'' to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) An application will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable

for filing by whichever ''cut-off'' date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application established the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. [For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the ''cut-off'' period established by A even though C is not directly mutually exclusive with A.]

(d) An application otherwise mutually exclusive with one of more previously filed applications, but filed after the appropriate date prescribed in paragraph (b)(2) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(e) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 21.23), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 21.35), and the Commission or the presiding officer accepts the amendment pursuant to § 21.23(b);

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing, by comparative evaluation pursuant to § 21.35, or by random selection pursuant to § 21.33 provided that the amendment does not create new or additional frequency conflicts;

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the ''cut-off'' requirements of this section is granted, unless the amendment is for more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application in which event the application will be dismissed;

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 21.29 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration, unless the amendment is for one (or more) pending Multipoint Distribution Service application (or applications) in which event the application (or applications) will be dismissed;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

(iv) The change of status by a MDS applicant from common carrier to non-

common carrier, or from non-common carrier to common carrier.

[44 FR 60534, Oct. 19, 1979, as amended at 45 FR 65600, Oct. 3, 1980; 45 FR 70468, Oct. 24, 1980; 50 FR 5993, Feb. 13, 1985; 52 FR 27554, July 22, 1987; 52 FR 37780, Oct. 9, 1987; 55 FR 10462, Mar. 21, 1990; 58 FR 11797, Mar. 1, 1993; 61 FR 26674, May 28, 1996]

§ 21.32 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings of objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to comparative consideration (pursuant to § 21.31) with another application (or applications), except where the competing applicants have chosen the comparative evaluation procedure of § 21.35 and a grant is appropriate under that procedure;

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is legally, technically, financially and otherwise qualified, and a grant of the application would serve the public interest.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 21.30, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements.

(3) The application is entitled to comparative consideration (under § 21.31) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 21.31) and the applicants have chosen the comparative evaluation procedure of § 21.35 but the Commission deems such procedure to be inappropriate.

(f) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) Whenever the public interest would be served thereby the Commission may grant one or more mutually