

(d) The employee concerned shall be provided an opportunity to explain the alleged misconduct. When, after consideration of the employee's explanation, the Chairman decides that remedial action is required, he shall take remedial action. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestiture by the employee of his conflicting interest;

(3) Action under the Commission's Ethics Program resulting in one of the following actions:

(i) When investigation reveals that the charges are groundless, the person designated by the Chairman to assist in administration of the program may give a letter of clearance to the employee concerned, and the case will not be recorded in his Official Personnel Folder;

(ii) If, after investigation, the case investigator deems the act to be merely a minor indiscretion, he may resolve the situation by discussing it with the employee. The case will not be recorded in the employee's Official Personnel Folder;

(iii) If the case administrator considers the problem to be of sufficient importance, he may call it to the attention of the Chairman, who in turn may notify the employee of the seriousness of his act and warn him of the consequences of a repetition. The case will not be recorded in the employee's Official Personnel Folder, unless the employee requests it;

(iv) The Chairman may, when in his opinion circumstances warrant, establish a special review board to investigate the facts in a case and to make a full report thereon, including recommended action; or

(v)(A) If the Chairman decides that formal disciplinary action should be taken, he may prepare for Commission consideration a statement of facts and recommend one of the following:

(1) *Written reprimand.* A formal letter containing a complete statement of the offense and official censure;

(2) *Suspension.* A temporary non pay status and suspension from duty; or

(3) *Removal for cause.* Separation for cause in case of a serious offense.

(B) Only after a majority of the Commission approves formal disciplinary

action will any record resulting from the administration of this program be placed in the employee's Official Personnel Folder; or

(4) Disqualification for a particular assignment.

(e) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart B—Employee Responsibilities and Conduct

§ 19.735–201 Outside employment and other activity prohibited by the Communications Act.

Under section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(2)(A)(iv), no employee of the Commission may be in the employ of or hold any official relation to any person significantly regulated by the Commission under that Act. In addition, the Commissioners are prohibited by section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(4), from engaging in any other business, vocation, profession, or employment.

NOTE: Under the Supplemental Standards of Ethical Conduct for Employees of the Federal Communications Commission, at 5 CFR 3901.102, professional employees of the Commission must obtain approval before engaging in the private practice of the same profession as that of the employee's official position, whether or not for compensation.

§ 19.735–202 Financial interests prohibited by the Communications Act.

(a) No Commissioner shall have a pecuniary interest in any hearing or proceeding in which he participates. (47 U.S.C. 154(j).)

(b)(1) Section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(2)(A), provides:

No member of the Commission or person employed by the Commission shall:

(i) Be financially interested in any company or other entity engaged in the manufacture or sale of telecommunications equipment which is subject to regulation by the Commission;

(ii) Be financially interested in any company or other entity engaged in the business of communication by wire or radio or in the use of the electromagnetic spectrum;

(iii) Be financially interested in any company or other entity which controls any

company or other entity specified in clause (i) or clause (ii), or which derives a significant portion of its total income from ownership of stocks, bonds, or other securities of any such company or other entity; or

(iv) Be employed by, hold any official relation to, or own any stocks, bonds, or other securities of, any person significantly regulated by the Commission under this act; except that the prohibitions established in this subparagraph shall apply only to financial interests in any company or other entity which has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission.

(2) To determine whether an entity has a significant interest in communications related activities that are subject to Commission regulations, the Commission shall consider, without excluding other relevant factors, the criteria in section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(3). These criteria include:

(i) The revenues and efforts directed toward the telecommunications aspect of the business;

(ii) The extent of Commission regulation over the entity involved;

(iii) The potential economic impact of any Commission action on that particular entity; and

(iv) The public perception regarding the business activities of the company.

(3)(i) Section 4(b) of the Communications Act, at 47 U.S.C. 154(b)(2)(B)(i), permits the Commission to waive the prohibitions at 47 U.S.C. 154(b)(2)(A). The Act's waiver provision at 47 U.S.C. 154(b)(2)(B)(i) provides:

The Commission shall have authority to waive, from time to time, the application of the prohibitions established in subparagraph (A) of section 4(b) to persons employed by the Commission if the Commission determines that the financial interests of a person which are involved in a particular case are minimal, except that such waiver authority shall be subject to the provisions of section 208 of title 18, United States Code. The waiver authority established in this subparagraph shall not apply with respect to members of the Commission.

(ii)(A) Requests for waiver of the provisions of 47 U.S.C. 154(b)(2)(A) may be submitted by an employee to the Head of the employee's Office or Bureau, who will endorse the request with an appropriate recommendation and forward the request to the Designated Agency

Ethics Official. The Designated Agency Ethics Official has delegated authority to waive the applicability of 47 U.S.C. 154(b)(2)(A).

(B) All requests for waiver shall be in writing and in the required detail. The dollar value for the financial interest sought to be waived shall be expressed explicitly or in categories of value provided at 5 CFR 2634.301(d).

(C) Copies of all waiver requests and the action taken thereon shall be maintained by the Designated Agency Ethics Official. In any case in which the Commission exercises the waiver authority established in section 4(b) of the Communications Act, the Commission shall publish notice of such action in the FEDERAL REGISTER and shall furnish notice of such action to the appropriate committees of each House of the Congress. Each such notice shall include information regarding the identity of the person receiving the waiver, the position held by such person, and the nature of the financial interests which are the subject of the waiver.

§ 19.735–203 Nonpublic information.

(a) Except as authorized in writing by the Chairman pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the Commission. Such information includes, but is not limited to, the following:

(1) The content of agenda items (except for compliance with the Government in the Sunshine Act, 5 U.S.C. 552b); or

(2) Actions or decisions made by the Commission at closed meetings or by circulation prior to the public release of such information by the Commission.

(b) An employee engaged in outside teaching, lecturing, or writing shall not use nonpublic information obtained as a result of his Government employment in connection with such teaching, lecturing, or writing except when the Chairman gives written authorization for the use of that nonpublic information on the basis that its use is in the public interest.

(c) This section does not prohibit the disclosure of an official Commission