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(3) The channel block requested, the maximum effective radiated power, the effective radiated power in each of the cardinal radial directions.

(b) If the application involves a service area boundary (SAB) extension (§ 22.912 of this chapter), the licensee must provide a statement as described in § 22.953.

(c) *Maps.* If the application proposes a change in the CGSA, it must include full size and reduced maps, and supporting engineering, as described in § 22.953 (a)(1) through (a)(3).

(d) *Antenna Information.* Upon request by an applicant, licensee, or the Commission, a cellular applicant or licensee of whom the request is made shall furnish the antenna type, model, and the name of the antenna manufacturer to the requesting party within ten (10) days of receiving written notification.

[63 FR 68951, Dec. 14, 1998, as amended at 64 FR 53241, Oct. 1, 1999]

§ 22.935 Procedures for comparative renewal proceedings.

The procedures in this section apply to comparative renewal proceedings in the Cellular Radiotelephone Service.

(a) If one or more of the applications competing with an application for renewal of a cellular authorization are filed, the renewal applicant must file with the Commission its original renewal expectancy showing electronically via the ULS. This filing must be submitted no later than 60 days after the date of the Public Notice listing as acceptable for filing the renewal application and the competing applications.

(b) Interested parties may file petitions to deny any of the mutually exclusive applications. Any such petitions to deny must be filed no later than 30 days after the date that the renewal applicant submitted its renewal expectancy showing. Applicants may file replies to any petitions to deny applications that are filed. Any such replies must be filed no later than 15 days after the date that the petition(s) to deny was filed. No further pleadings will be accepted.

(c) In most instances, the renewal application and any competing applications will be designated for a two-step procedure. An Administrative Law Judge (Presiding Judge) will conduct a threshold hearing (step one), in which both the licensee and the competing applicants will be parties, to determine whether the renewal applicant deserves a renewal expectancy. If the order designating the applications for hearing specifies any basic qualifying issues against the licensee, those issues will be tried in this threshold hearing. If the Presiding Judge determines that the renewal applicant is basically qualified and due a renewal expectancy, the competing applicants will be found ineligible for further consideration and their applications will be denied. If the Presiding Judge determines that the renewal applicant does not merit a renewal expectancy but is otherwise qualified, then all of the applications will be considered in a comparative hearing (step two).

(d) Any competing applicant may request a waiver of the threshold hearing (step one), if such applicant demonstrates that its proposal so far exceeds the service already being provided that there would be no purpose in making a threshold determination as to whether the renewal applicant deserved a renewal expectancy vis-a-vis such a competing applicant. Any such waiver request must be filed at the time the requestor's application is filed. Petitions opposing such waiver requests may be filed. Any such petitions must be filed no later than 30 days after the date that the renewal applicant submitted its renewal expectancy showing. Replies to any petitions opposing such waiver requests may be filed. Any such replies must be filed no later than 15 days after the date that the petition(s) were filed. No further pleadings will be accepted. Any waiver request submitted pursuant to this paragraph will be acted upon prior to designating the applications for hearing. If a request to waive the threshold hearing (step one) is granted, the renewal expectancy issue will be designated as part of the comparative hearing (step two), and will remain the most important comparative factor in deciding the case, as provided in § 22.940(a).

(e) If the Presiding Judge issues a ruling in the threshold (step one) that

denies the licensee a renewal expectancy, all of the applicants involved in the proceeding will be allowed to file direct cases no later than 90 days after the release date of the Presiding Judge's ruling. Rebuttal cases must be filed no later than 30 days after the date that the direct cases were filed.

(f) The Presiding Judge shall use the expedited hearing procedures delineated in this paragraph in both threshold (step one) and comparative (step two) hearings conducted in comparative cellular renewal proceedings.

(1) The Presiding Judge will schedule a first hearing session as soon as practicable after the date for filing rebuttal evidence. This first session will be an evidentiary admission session at which each applicant will identify and offer its previously circulated direct and rebuttal exhibits, and each party will have an opportunity to lodge objections.

(2) After accepting the exhibits into evidence, the Presiding Judge will entertain motions to cross-examine and rule whether any sponsoring witness needs to be produced for cross-examination.

Determination of what, if any, cross-examination is necessary is within the sound judicial discretion of the Presiding Judge, the prevailing standard being whether the person requesting cross-examination has persuasively demonstrated that written evidence is ineffectual to develop proof. If cross-examination is necessary, the Presiding Judge will specify a date for the appearance of all witnesses. In addition, if the designation order points out an area where additional underlying data is needed, the Presiding Judge will have the authority to permit the limited use of discovery procedures. Finally, the Presiding Judge may find that certain additional testimony or cross-examination is needed to provide a complete record for the FCC. If so, the Presiding Judge may schedule a further session.

(3) After the hearing record is closed, the Presiding Judge may request Proposed Findings of Fact and Conclusions of Law to be filed no later than 30 days after the final hearing session. Replies are not permitted except in unusual cases and then only with respect to the specific issues named by the Presiding Judge.

(4) The Presiding Judge will then issue an Initial Decision, preferably within 60 days of receipt of the last pleadings. If mutually exclusive applications are before the Presiding Judge, the Presiding Judge will determine which applicant is best qualified. The Presiding Judge may also rank the applicants in order of merit if there are more than two.

(5) Parties will have 30 days in which to file exceptions to the Initial Decision.

[59 FR 59507, Nov. 17, 1994, as amended at 62 FR 4172, Jan. 29, 1997; 63 FR 68951, Dec. 14, 1998]

§ 22.936 Dismissal of applications in cellular renewal proceedings.

Any applicant that has filed an application in the Cellular Radiotelephone Service that is mutually exclusive with an application for renewal of a cellular authorization (competing application), and seeks to resolve the mutual exclusivity by requesting dismissal of its application, must obtain the approval of the FCC.

(a) If a competing applicant seeks to dismiss its application prior to the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal of its application. This request for approval of the dismissal of its application must be submitted and must also include a copy of any agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the withdrawal or dismissal of the application, except that this provision does not apply to dismissal or withdrawal of applications pursuant to *bona fide* merger agreements;

(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